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**Legislative Assembly
of Ontario**

First Session, 37th Parliament

**Assemblée législative
de l'Ontario**

Première session, 37^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 3 November 1999

**Journal
des débats
(Hansard)**

Mercredi 3 novembre 1999

**Standing committee on
regulations and private bills**

Organization

**Comité permanent des
règlements et des projets
de loi privés**

Organisation

Chair: Frances Lankin
Clerk: Anne Stokes

Présidente : Frances Lankin
Greffière : Anne Stokes



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS

Wednesday 3 November 1999

The committee met at 1008 in committee room 1.

ELECTION OF CHAIR

Clerk of the Committee (Ms Anne Stokes): Good morning, everybody. Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

Mr Garfield Dunlop (Simcoe North): Madam Clerk, I'm pleased to be here this morning with three other new members of our caucus, and I'm pleased at this time to nominate Frances Lankin as the Chair of this committee.

Clerk of the Committee: Ms Lankin is nominated for Chair. Are there any other nominations for Chair? No? There being no further nominations, I declare nominations closed, and Ms Lankin is elected Chair of the committee, if she would like to come forward and sit up here.

Mr Tony Ruprecht (Davenport): Do we have time for some congratulatory speeches?

The Chair (Ms Frances Lankin): With thanks to my nominator.

Mr Ruprecht: I've been on this committee, Madam Chair, for 19 years now, and this is the first time we have a member of the NDP caucus as Chairperson. Congratulations to you.

The Chair: Thank you very much.

ELECTION OF VICE-CHAIR

The Chair: We'll move on to the election of the Vice-Chair. Are there any nominations for the position of Vice-Chair?

Mr David Young (Willowdale): Madam Chair, I'd like to nominate Garfield Dunlop to be Vice-Chair of this committee.

The Chair: A nomination for Garfield Dunlop. Are there any further nominations? Seeing none, the nominations are closed. There being no further nominations, I declare that Garfield Dunlop has been elected Vice-Chair of the committee. Congratulations.

Mr Dunlop: Thank you.

Mr Young: What about an acceptance speech?

Mr Dunlop: That was my speech.

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Mercredi 3 novembre 1999

APPOINTMENT OF SUBCOMMITTEE

The Chair: I believe the next order of business is a motion to appoint the business subcommittee of this committee.

Mr Ruprecht: I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting and that the subcommittee be composed of the following members: as Chair, Ms Lankin; and the members of the subcommittee are Mr Young, Mrs Boyer and Mr Bisson; and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

The Chair: Is there any discussion on the motion? All those in favour? Opposed? That's carried.

Is there any further business; any items that anyone wants to raise?

Do we have any indication of the schedule of meetings at this point in time?

Clerk of the Committee: There is a private bill that is due to be introduced in the House today. Next week is constituency week. We could deal with it as early as the week following, and there is a possibility of one or two other bills being introduced in the meantime.

The Chair: So committee members can expect that the week the House resumes after constituency week, there will be a committee meeting.

Any further business?

Mr Young: Madam Chair, on that point, do we generally then meet at this hour when we do meet?

The Chair: Wednesday at 10. The committee time is set from 10 to 12 if there is enough business to take that time.

The arrangements for meetings of the subcommittee will be done among members of the committee at a time that's convenient. Often we'll find a time during the House sitting, where we'll meet in one of the lobbies, either the east or west lobby, if that's necessary. OK?

No other business? The meeting is adjourned. See you in two weeks.

The committee adjourned at 1013.

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Vice-Chair / Vice-Président

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Mr Gilles Bisson (Timmins-James Bay / Timmins-Baie James ND)

Mrs Claudette Boyer (Ottawa-Vanier L)

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REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 24 November 1999

Mercredi 24 novembre 1999

The committee met at 1012 in room 151.

The Chair (Ms Frances Lankin): I'd like to call the meeting to order. My apologies to all of you who first attended at the other room. We had a bit of a technical problem so, as you know, we've relocated and appreciate your patience with the slight delay.

SUBCOMMITTEE SUBSTITUTION

The Chair: I understand that there may be a motion with respect to subcommittee membership, Mr Dunlop?

Mr Garfield Dunlop (Simcoe North): Yes, Madam Chair. I move that Mr Coburn replace Mr Young as a member of the subcommittee on committee business for the standing committee on regulations and private bills.

The Chair: OK, thank you. Is there any discussion on this motion? None?

All those in favour? Opposed? Abstentions? Thank you, that's carried.

HARBOURFRONT TRAILER
PARK LTD. ACT, 1999

Consideration of Bill Pr1, An Act to revive Harbourfront Trailer Park Ltd.

The Chair: If we can move to the business agenda of today, the first bill before us is Pr1, An Act to revive Harbourfront Trailer Park Ltd.; the sponsor is Mr Dunlop. Mr Dunlop, would you like to introduce anyone from the applicants here today?

Mr Dunlop: I would like to introduce Mr Peter Deacon, the solicitor for Harbourfront. I'll go back and join him.

The Chair: Mr Dunlop, do you have any introductory comments you would like to make as sponsor?

Mr Dunlop: Oh, I think it's going to be straightforward, Madam Chair, and I think Mr Deacon can do a brief description of it here.

Mr Peter Deacon: For the record, my name is Peter Deacon. My law firm is Deacon Taws of Midland, Ontario. Mr Edward Ferski is the applicant requesting the legislation.

The Chair: On behalf of the applicant—please be seated; we're very informal here—would you like to make any comments about the bill?

Mr Deacon: A couple of very brief comments. First of all, I would like to thank Mr Dunlop for sponsoring

the bill. Mr Ferski's business actually is in the Parry Sound riding of Mr Eves, and because of his position in cabinet it wasn't appropriate for him to sponsor the bill, so we asked Mr Dunlop to step in and he very kindly did. Also, I'd like to make a comment about how appreciative we are for the help of the staff from the committee clerk's office and legislative counsel. They've been extremely helpful in the whole application process.

The problem that arose requiring the legislation is that my client owned a corporation which had substantial assets. He wanted to change the name of the company to Harbourfront and apply for articles of amendment and file that. At the same time, he was required to file what's called a form 1 with the ministry to indicate the current information for the corporation.

In fact, nothing had changed—there was one director, one shareholder, one officer, and everything was the same—but in completing the forms he didn't do it correctly, and after back and forth with the ministry, he thought he'd had it straightened out, but in fact he'd been served with a notice to appear at a hearing to remove the charter. He didn't attend, and the end result was that the charter was revoked and the company disbanded. He's now in the position of having to apply to this committee to have the corporation reinstated as if it had not been disbanded.

It was a misunderstanding between him and the staff. It's not a question of blame. In my submission, it's simply a question of correcting a problem and allowing the business to continue on as if there had been no interruption.

I'm happy to answer any questions that anybody may have.

The Chair: Just before we ask if there are any questions, are there any interested parties to this application who are in attendance? I ask Mr Coburn, the parliamentary assistant, if the government has any comments on this bill.

Mr Brian Coburn (Carleton-Gloucester): No, Madam Chair. All things have been satisfied. As far as we're concerned, the director has been identified, the fee has been paid and it now meets all the criteria laid down.

The Chair: Thank you. Are there any questions from committee members?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): I know the case is pretty straightforward, but I think one of the things we must address—whether

we address it today or at another time separately as a committee without any witnesses or anything—is that sometimes in cases like this things fall through the cracks, miscommunications of the government. As you know, the government is very interested in reducing or cutting out red tape. It seems to me this case is classic example of red tape, if I read it correctly, in which case there is correspondence back and forth, the parties thought they were on the right track and all of a sudden the letter comes back saying, “No, this is revoked.” There was no intermediary understanding that this could have been resolved outside of this committee, I think. Whether we discuss it now or in committee separately, I leave up to you.

The Chair: Thank you, Mr Gill. What I might do is ask Mr Coburn, as the parliamentary assistant, to take that under advice. As you know, there have been a number of pieces of legislation—there are some before the House now which would have an effect on this overall piece of legislation we’re dealing with; in the past, there was one that was passed which put things such as failure to pay registration fees—which have eliminated the requirement to bring a private bill before this committee. There are still some aspects within the bill that the government and the Legislature at the time felt were important. This may be an example of one that is or isn’t, but perhaps the parliamentary assistant could take your concerns under advisement and, if he sees fit, I’m sure he’ll advise the government. Mr Coburn?

Mr Coburn: I would be happy to do that, Madam Chair.

The Chair: Thank you. Are there other questions from committee members or any interested party? Mr Dunlop, did you want to say something?

Mr Dunlop: I just want to thank the clerk and the counsel for the help they’ve given on this as well. It’s been a pleasure working with you.

The Chair: Are the members ready to vote? This is a straightforward bill. You’ll have to bear with me. This is the first time I’ve chaired this committee, so I’m going to follow the script here and make sure I get it right.

We’re dealing with Bill Pr1, An Act to revive Harbourfront Trailer Park Ltd, sponsored by Mr Dunlop.

Shall sections 1 through 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Carried.

Thank you. I think we say thank you to Mr Deacon and we appreciate your attendance here today. The bill will be reported to the House this afternoon.

Mr Deacon: Thank you very much.

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TOWNSHIP OF NORTH KAWARTHA ACT, 1999

Consideration of Bill Pr8, An Act to change the name of The Corporation of the Township of Burleigh-

Anstruther-Chandos to The Corporation of the Township of North Kawartha.

The Chair: The next bill on our agenda is Bill Pr8, An Act to change the name of The Corporation of the Township of Burleigh-Anstruther-Chandos to The Corporation of the Township of North Kawartha. Mr Stewart is the sponsor. Your applicants are here with you, Mr Stewart?

Mr R. Gary Stewart (Peterborough): Yes.

The Chair: Welcome. Have a seat. Mr Stewart, would you introduce the applicant’s representatives, please.

Mr Stewart: It is my pleasure to introduce Bill Pr8. With me is the warden of Peterborough county, Ms Elizabeth Tanner, and also the CEO of the township of Burleigh-Anstruther-Chandos.

I have just one comment on this, if I may. This has come about because of restructuring within Peterborough county a couple of years ago, and albeit that it is in Peterborough county, I’m doing this on behalf of the Honourable Chris Hodgson, because these three townships are now in the riding of Haliburton-Victoria-Brock.

When you see all these long names, this is why a lot of them have to be changed, because we get a little tongue-tied. I’m going to ask if either one of these folks would like to say a few words.

Ms Elizabeth Tanner: Thank you. I’m also the reeve of—

The Chair: Could you identify yourself on the record again.

Ms Tanner: I’m Elizabeth Tanner, reeve of Burleigh-Anstruther-Chandos and warden of Peterborough county. I want to thank you for your time this morning. Actually, the clerk is going to speak to this issue at this time.

Ms Dorothy Walke: First of all, I would like to thank Mr Stewart—

The Chair: Sorry, once again, can you identify yourself on the record.

Ms Walke: Dorothy Walke. I’m the clerk of Burleigh-Anstruther-Chandos. I’d like to thank Mr Stewart for presenting our bill and doing it on behalf of Mr Hodgson, and I’d also like to thank Ms Klein, from legislative counsel—I realize she’s not here—and her staff for the help they gave me; and Ms Stokes, the clerk, for the assistance she gave me in the preparation of and working through this bill.

As Mr Stewart has alluded to, this bill came about because of our amalgamation of Burleigh-Anstruther with Chandos township, or Chandos township with Burleigh-Anstruther, whichever way you want to perceive it.

Back in 1998, we sent out a questionnaire to all of our ratepayers. In that questionnaire, we asked, first of all, if they would like to change the name of the municipality. If they said yes, we asked that they give us an idea of the name they would like to see it changed to. If they said no, that was fine.

We took those names that were presented to us, and there were a number of names, and an independent committee went through the names. They were assessed on the easiness of how to put them together with the

township, the flow, as well as how they fit with our area geographically and so on. We narrowed it down to six names, and among those names was the original Burleigh-Anstruther-Chandos, again giving the rate-payers an opportunity to vote on the name that it was originally, and the township of North Kawartha.

As a result of that vote, the township of North Kawartha received 498 votes and Burleigh-Anstruther-Chandos came next, with 394. The total number of votes submitted was 1,297.

The Chair: Thank you. Is there anything else?

Mr Gilles Bisson (Timmins-James Bay): What was it, 50-some-odd percent?

Ms Walke: Yes. Almost 50%; of 1,297, 498 voted for North Kawartha.

Mr Bisson: And that was the highest. Among those other names—

The Chair: Mr Bisson, if you could hold your questions, we'll be getting to questioning in a minute.

Mr Bisson: Thank you very much, Chair.

The Chair: You're welcome.

Mr Bisson: You're very, very assisting.

The Chair: Any time I can be of assistance to you, I'll try.

Reeve, is there anything else you wanted to add to the presentation?

Ms Tanner: Actually, we felt the first response we received wasn't fully reflective of all the ratepayers in the municipality, and that's why we've had to come for a special bill, because the restructuring order did allow for a name change but we simply didn't have the time to petition our ratepayers to find out what their feelings were and get back before the deadline in order to do the name change through the restructuring order.

The Chair: OK, thank you. Now, I have no indication of any interested parties attending today. Are there any?

Seeing none, Parliamentary Assistant, any comment from the government?

Mr Coburn: No. This is the only process available to change the name now, and the ministry has no objection.

The Chair: Thank you. Committee members, any questions?

Mr Bisson: She answered my question.

Interjections.

The Chair: It won't be the first time.

Are the members ready to vote on this? This is Bill Pr8, An Act to change the name of The Corporation of the Township of Burleigh-Anstruther-Chandos to The Corporation of the Township of North Kawartha, sponsored by Mr Stewart.

Shall section 1 carry? Carried.

Shall section 2 carry? I understood there was an amendment that was to be put forward. Let me ask again: Section 2, Mr Dunlop?

Mr Dunlop: I move that section 2 of the bill be amended by striking out "Any reference in a general or special Act" at the beginning and substituting "Any reference in a general or special Act or in a regulation, bylaw, agreement or other document".

The Chair: Mr Dunlop, would you like to explain the purpose of the amendment?

Mr Dunlop: I'd like to pass that on to the legal counsel, please.

The Chair: I'll ask legal counsel, then.

Ms Laura Hopkins: The amendment is a technical legal amendment in order to make sure that references in agreements and other documents as well as in bylaws and legislation to the former names of the municipalities are read as the new name of the municipality. It's just a technical change.

The Chair: I understand, counsel, that the applicants were made aware of this and there were no objections for purposes of the goal of the act.

There is an amendment before us, moved by Mr Dunlop. Is there any debate or discussion on the amendment? Seeing none, shall the amendment carry? Carried.

Shall section 2, as amended, carry? Carried.

Is there any debate or concern with sections 3 or 4?

Shall sections 3 and 4 carry? That's carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

Thank you very much. We appreciate your attendance here today with us.

TOWN OF PICKERING ACT, 1999

Consideration of Bill Pr7, An Act respecting The Corporation of the Town of Pickering.

The Chair: The next bill on our agenda is Bill Pr7, An Act respecting The Corporation of the Town of Pickering, sponsored by Mr O'Toole. Mr O'Toole, if you could take a seat and invite your applicants to join you, and perhaps you could introduce them to us.

Mr John O'Toole (Durham): Thank you, Madam Chair, and good morning. It's a pleasure to be on this side of the table for a change. It'll probably be a lot more harmonious.

Madam Chair and members of the committee, respectfully, I have with me John Reble, who is counsel for the town of Pickering, and Mary Howarth, who is the municipal law assistant. We have regrets from Bruce Taylor, the clerk of the town of Pickering.

The proposal is to give the town of Pickering greater authority in regulating activities on public highways under its jurisdiction. I should point out that similar legislation has already been passed in other municipalities. If passed, the town would be able to create bylaws "regulating or prohibiting the selling, offering to sell or displaying of any goods, merchandise, products, refreshments, foodstuffs or flowers on public highways" under its jurisdiction.

1030

Importantly, Bill Pr7 would also give the town new enforcement powers. An authorization bylaw officer would now be able to remove, take and store items sold

on the streets of Pickering if they are in contravention of the town's bylaw.

From my discussion with the clerk, Mr Taylor, and the town solicitor, and from my own personal experience as a councillor in the region of Durham, it is my understanding that this bylaw is in compliance with other overriding laws or bylaws. The bill would simply give the town of Pickering a greater degree of control over activities on its streets.

Committee members may be interested to know that Pickering has experienced difficulties with flower vendors who come in from other areas of the province on weekends and set up shop on busy intersections. Clearly, this has become a safety issue inasmuch as, as an activity, it draws crowds. Parking becomes a problem as well. As well, there is an important issue of the town having to deal with itinerant vendors, which makes enforcement very difficult. It hurts many other small businesses which are supporting their local communities.

In summation, I am pleased to sponsor this private member's bill on behalf of Minister Ecker as well as the town of Pickering, and I ask the committee's indulgence to help the bill proceed quickly.

If there are any questions, I am sure Mr Reble would be certain to answer any technical questions, with your indulgence. That's the end of the remarks.

The Chair: Mr Reble or Ms Howarth, did you want to add anything at this point in time?

Mr John Reble: Thank you very much for hearing us. First of all, I'd like to thank Mr O'Toole, the member for Durham, for sponsoring this bill; and also the work that legislative staff have provided to us in working this through.

I really have only one comment to make, and that is that Mr O'Toole indicated that similar acts have been approved for Mississauga, Brampton and the city of Toronto over the past 10 years. Our understanding is that it has enabled them to carry out enforcement procedures in a much more efficient manner. Those acts do allow a confiscation of motor vehicles; our act does not. We took that out. We felt that was somewhat arbitrary and unnecessary, especially in our conversations—Mrs Howarth spoke with counsel for those municipalities and felt that the confiscation of vehicles for these vendors was something that was not required. Some of these people are new Canadians. They are there representing a corporation which is really profiting from this activity, and it was deemed to be unfair, unjust and unnecessary to include it. We simply are asking for the additional ability to confiscate the goods that are being sold, issue a receipt and return them if requested.

The Chair: I have no indication on the agenda of any interested parties to this application or this bill. Are there any? No.

May I ask the parliamentary assistant if the government has any comments?

Mr Coburn: No. We have no objections to this with respect to this legislation enabling Pickering to achieve what they would like to do.

The Chair: Committee members?

Mr David Young (Willowdale): If the parliamentary assistant can assist, we've heard counsel describe one of the distinctions that exists between this proposed act and the legislation that exists in other municipalities. Are there other distinctions beyond the one that has been described here today regarding the confiscation of automobiles or vehicles generally? Are there some other distinctions between this proposed legislation and the existing legislation?

The Chair: Mr Young, your question was to legislative staff or—

Mr Young: To staff or the parliamentary assistant, if they can assist.

Mr Coburn: I don't know exactly of any other distinction—maybe staff can respond to that—but I would point out that it is being addressed in the draft of the new Municipal Act. It has been a concern raised by a number of municipalities with respect to the confiscation of goods within the—

Mr Young: What do they do in the Ottawa region?

Mr Coburn: They have a bylaw that permits it.

The Chair: Just for clarification, Mr Coburn, you're suggesting that with an amendment to the Municipal Act, the government's intent is to have a common provision that would give similar powers to all municipalities.

Mr Coburn: That's correct.

Mr Young: I'm not sure if there's additional information being brought to the table.

Mr Coburn: Excuse me, I must correct the information I gave you on the city of Ottawa. It's a permit system that they have.

Mr Young: That's fine. Thanks very much.

The Chair: Are there any further committee members?

Mr Bisson: I'm just curious; I'm wondering if legislative counsel can answer this. Is this the first municipality to ask for these powers? How have they been dealing with it?

Ms Hopkins: Not to my knowledge. I think there have been two other municipalities that have asked for these powers, but as the applicant explained, this municipality is asking for powers that are slightly less than what the other two municipalities—

Mr Bisson: What was the outcome?

Ms Hopkins: Can you help me?

Mr Reble: Yes. Brampton and Mississauga both have this legislation. Ms Howarth has communicated with counsel there. Ms Howarth, would you care to—

Ms Mary Howarth: I have spoken with the enforcement officers in the three municipalities that have asked for a similar bill and had the bill approved. Brampton's was approved in 1997. I was informed by the enforcement officer that just in the first six months did they use the confiscatory powers. They've never confiscated a vehicle. But using those powers seemed to work and after that the threat alone, the fact that they could say, "We have this power in our bill" has greatly reduced the problem of the flower sellers.

Mississauga reported the same thing. Their bill was approved in late 1994. They have not confiscated any goods since January 1995. Again, a warning is given the first time. The usual part I tickets under the Provincial Offences Act have been issued, but the warning alone has seemed to eliminate the problem.

Those municipalities are very similar to the town of Pickering in the sense of the kinds of roads we're talking about and the safety aspect of people pulling over and impeding the free flow of traffic. That alone, I was informed, has worked. Also, Mississauga told me that they once hooked up a vehicle and the person said, "OK, I'll leave." They hooked up an ice-cream vendor and that took care of that.

The Chair: Thank you. Any other questions?

Mr Gill: Despite all these bylaws, I live in Mississauga and I see all kinds of vendors there. I see the corn or husk sellers—

Mr Bisson: We call it husk because it's hardly corn.

Mr Gill: That's right. You would know, being from a rural riding. Also some of the others—flowers. Of course we need these regulations, but I don't think they're being enforced. I see all kinds of them in Mississauga itself. That's just as a comment; I wanted to address that.

The Chair: Would you like me to pass that on to Mississauga city council?

Mr Gill: They're aware of it.

Mr Reble: In some instances they may not actually be on the road allowance. They may be off the road allowance. Of course, it's enforced by complaint as well.

The Chair: Thank you very much for that. Are the members ready to vote now?

Mr Young: We are.

The Chair: Definitely said by Mr Young.

The Chair: Bill Pr7, An Act respecting The Corporation of the Town of Pickering, sponsored by Mr O'Toole. There are five sections I'm going to be dealing with. Are there any concerns that anyone wants to raise with respect to any of them?

Shall sections 1 through 5 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? OK.

Thank you very much. Thank you for joining us here today. I appreciate that.

Mr O'Toole: That was very hospitable of you.

The Chair: Just don't get used to it, John.

PEMBRIDGE INSURANCE COMPANY ACT, 1999

Consideration of Bill Pr13, An Act respecting Pembridge Insurance Company.

The Chair: The fourth bill on our agenda today is Bill Pr13, An Act respecting Pembridge Insurance Company. The sponsor is Bob Wood.

Mr Wood, if you would come forward. Please have a seat and introduce representatives of the applicant you have with you today.

Mr Bob Wood (London West): I would like to introduce to the committee Mr Jim Harvey, who is vice-president and the chief financial officer of Pembridge Insurance Co, and Paola Turner, who is their legal counsel.

I'd like to thank very much everyone who has been involved in this process, all of whom have been very helpful to us as this bill has been prepared and presented to the Legislature.

As members will be aware, when an insurance company wants to migrate from provincial to federal jurisdiction, as the law now stands it has to be done by a private bill, which is the reason for this bill today.

I understand that the ministry has no objection and, as far as we know, there are no other objections that we're aware of, and I'd like to recommend the bill to the committee. We would be pleased to answer any questions there may be.

The Chair: Thank you. Mr Harvey or Ms Turner, do you have any comments that you would like to add?

Ms Paola Turner: I would just like to thank Mr Bob Wood for agreeing to introduce the bill and thank the committee for taking the time to hear us today.

The Chair: Thank you. I have no notice of any interested parties with respect to this bill. Are there any here today?

Seeing none, may I ask Mr Coburn, the parliamentary assistant, are there any comments from the government?

Mr Coburn: We have no objections to this, so there are no questions of this legislation.

The Chair: Are there any questions or comments from committee members?

Mr Young: I don't have any grave concerns about it, and perhaps it's a reflection of how new I am to this process, but what is it that compels this particular insurance company to request a change of status from provincial to federal?

Mr James Harvey: We own two insurance companies, one of which is legislated federally, and Pembridge is a new acquisition to our group of companies. It's governed provincially, and we don't have the experience with the provincial legislation and it's much easier for us to have the two companies under one jurisdiction.

Mr Young: What sort of insurance does this company provide?

Mr Harvey: Property and casualty insurance.

Mr Young: Commercial general?

Mr Harvey: No, not general insurance. Just to private individuals, home and auto insurance.

Mr Young: I see. Thank you very much.

The Chair: Are there any other questions or comments from committee members? No? Are the members ready to vote?

This is Bill Pr13, An Act respecting Pembridge Insurance Company, sponsored by Mr Wood. There are four sections. Are there any comments or concerns with any of these sections? No?

Shall sections 1 through 4 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Carried.

Mr Wood: Thank you very much, Madam Chair.

The Chair: Thank you for joining us today.

At this point in time, as there is no other business listed on the agenda, is there any other business coming forward from committee members?

Mr Young: I could move adjournment, if it's appropriate, Madam Chair. I want to be on the record in some fashion. May I have the privilege of moving adjournment?

The Chair: You can have that privilege. All those in favour?

Mr Bisson: I'm opposed.

The Chair: All those opposed? Mr Bisson wanted to be on record as well. Carried. The meeting is adjourned.

The committee adjourned at 1044.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

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Wednesday 8 December 1999

Standing committee on
regulations and private bills

Journal des débats (Hansard)

Mercredi 8 décembre 1999

Comité permanent des
règlements et des projets
de loi privés



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS

Wednesday 8 December 1999

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Mercredi 8 décembre 1999

*The committee met at 1009 in committee room 1.*BLUE MOUNTAIN VILLAGE
ASSOCIATION ACT, 1999

Consideration of Bill Pr14, An Act respecting Blue Mountain Village Association.

The Vice-Chair (Mr Garfield Dunlop): Good morning, everyone. I call the meeting to order. Our first item of business is Bill Pr14, An Act respecting Blue Mountain Village Association. The sponsor this morning is Bill Murdoch, member of provincial Parliament from that area, and the applicant is the Blue Mountain Village Association. Mr Comish, the counsel, is here as well. Mr Murdoch, have you any comments?

Mr Bill Murdoch (Bruce-Grey): I only have about a half-hour, so I won't take too long. I'm just here to present the bill to you, and Bob can probably answer any of the questions you'd like after he has a small presentation. As you said, the development is in my old area of Blue Mountain and I think it's going to be great for our area if this happens, so I was very pleased to be able to introduce the bill into the House. Bob, I'll just let you explain what's going on.

Mr Robert Comish: Thank you very much, Mr Chairman and members of the committee. I thought what I'd do this morning is not so much focus on what's in the bill—I'd obviously be happy to talk about any of the provisions you have any questions on—but focus on why a bill is needed at all and what's the background to that.

As you probably are aware, Intrawest and Blue Mountain Resorts are proposing to develop a four-season destination resort at the foot of Blue Mountain. They will be spending somewhere between \$500 million and \$600 million to do that. The resort itself will consist of approximately 2,100 recreational residences on about 200 acres of land and there will be two differentiated areas. The village core itself will contain about 1,275 condo units and about 100,000 square feet of commercial space for restaurants and retail operations.

The village will be essentially a pedestrian village. No vehicular traffic will be allowed in it. There is a ring road that goes around the outside of the village core and that will be the means by which the people who reside in the village will access their condo hotel units. There will be underground parking underneath each of the condo-

minium lodges for the residences. There will be extensive public walkways, public plazas. There's going to be a very significant millpond in the centre of the village, which will be the focal point of the village, and a significant amount of open landscaped areas. In addition to those sorts of things, there will be a conference centre, a sports centre, an aqua centre and possibly some other types of recreational activities within that village core area.

Outside the village core but on lands that are adjacent to it and which are really located around the Monterra Golf Course, there's going to be another 825 multi-family and single-family residences, all within easy walking distance of the village core.

This new village will be essentially a virtual new town. It will be based, though, primarily on the economic interests of the stakeholders who have an interest in the village and the lifestyle interests of the people who are recreational property owners. Other than the people owning most of the single-family homes, most of the condominium units will be occupied for probably only a few weeks of the year by the actual owner. The rest of the time those units will be in a rental pool generating income, obviously, for the owner to look after the mortgage that no doubt he or she has taken out.

As I mentioned, there's a fairly significant variety of different people who have an interest in the village. There are the owners of the recreational residences themselves, there will be the condo hotel unit owners and there will be the commercial tenants. In addition, there's a class of membership called associate members, essentially people who do not have any real property interest in the village. These would be people such as product and service sponsors, licensees who operate businesses within the village or people who operate businesses outside the village but who want to have a connection with the village for the economic benefits that would be derived from that association. Time-share owners would be another.

In addition, the stakeholders also include Intrawest, which is the owner and developer of the lands and will continue to be the landlord of all the commercial space. The commercial space is located on the ground floor of most of the condominium lodges. Blue Mountain Resorts will continue to be the owner and operator of the recrea-

tional facilities up there: the skiing, the golf courses, the tennis etc.

All of these stakeholders have a significant economic interest in the village. Their real property interest, with the exception of probably people who buy single-family homes and intend to use them exclusively as recreational properties—that's only a secondary interest for most people. Their economic interest is in looking at this as a property which they can use themselves on a part-time basis for recreational enjoyment, but the rest of the time having that property work for them by generating income on their behalf.

These economic interests are entirely dependent on the village attracting large numbers of tourists year-round. Right now about 750,000 tourists visit the Blue Mountain resort area annually. We expect that by 2006, when the village is completed, that number will go up to something above two million visitors a year.

The principal function of the association is to ensure that the village is operated as a destination resort in order to attract on a continual basis year-round this large number of tourists who need to be there to support the economy of the village. To do that the association will undertake a very extensive marketing program year-round. It will develop also a year-round program of special events and other attractions to encourage people to go up there on weekends to enjoy a few days' holiday. The association of course will ensure that the village is always maintained and operated at the very highest standards that are applicable to world-class destination resorts.

To do this the association will have a budget, we estimate, somewhere between \$2 million and \$3 million a year. It's a significant business operation that the association will be carrying on on behalf of all the various stakeholders.

You can think of the association as essentially the glue that holds together this very significant economic engine and ensures that it's always going at fast-forward. To accomplish its mandate, the association needs to be a creature of statute that has certain unique powers and features that are given to it by virtue of this bill. These will include things such as the requirement in the bill that all real property owners must be members of the association. It creates and authorizes various classes of members who are entitled to have separate votes on separate matters to reflect the interests that the various stakeholders do have, varying interests in terms of both economic interests as well as lifestyle interests.

The association is given the right under the act to place a lien on any defaulting member's property. This is essentially required to ensure that all of the other stakeholders are properly protected from any member who, for whatever reason, decides that he or she doesn't want to continue to be part of the team. It has an additional provision that requires commercial landlords to be jointly and severally liable for fees that their tenants are responsible for.

The act creates a level playing field for all the stakeholders, ensuring that they're all subject to the same rules and obligations, but reflecting their various economic interests. It protects each of the stakeholders from any member who defaults on its obligations.

While this is a unique statute for Ontario, similar statutes have been passed in a number of jurisdictions in North America, including Colorado, British Columbia and Quebec.

1020

The act has been reviewed with a great deal of interest by a number of the ministries, including municipal affairs and housing, consumer and commercial relations, Attorney General, finance and tourism. Their concerns and comments were carefully considered and addressed where appropriate. I am personally not aware of any ministry that is currently objecting to the bill in its present form.

Lastly, I should mention that we have had KPMG do an economic impact study for this village. It throws off, I think, some pretty impressive numbers. It's anticipated that the construction, which we expect will take probably five to six years, will generate a little more than 10,500 construction jobs. It will generate \$157 million in new government revenues. But more importantly, on a permanent basis the new village and the expanded recreational operations that are associated with that village will create an additional 4,140 permanent jobs and will increase government revenues at all levels by another \$44.7 million.

That is all I wanted to say on this bill, but I'd be very happy to respond to any questions anyone may have.

The Vice-Chair: Thank you very much. Are there any comments or questions from any of the committee members at this point?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): As in any situation, I find this a great plus for Ontario and Blue Mountain. I had the pleasure of being there in the fall. It's a great area to go and visit. I'm sure it's going to be good for Ontario. At the same I'm sure, as in any project, there are sometimes negative concerns. Have you had any negative feedback, negative concerns from any of the stakeholders?

Mr Comish: Much to our surprise we've had virtually no adverse comments at all. I've had occasion to talk to Mr Geddes, the mayor of the town of Collingwood, and Mr Ross Archer, who's the mayor of the town of Blue Mountain, both of whom have said, much to their surprise, that this proposed development has received virtually unanimous support from the people who live in the area. The only concern I'm aware of has been voiced by people who are concerned that in the long term the transportation situation will probably have to be improved. If we're as successful as we believe we will be, in terms of attracting visitors, eventually the road system up there will need to be expanded to handle it properly.

Mr Murdoch: To add to that, I've already met with David Turnbull and the mayor of Collingwood and other

people in Grey county. They are working with the ministry to look at different routes into the area for traffic. We're well on to that. To add to it also, Grey county approves it, even the city of Owen Sound, because the spinoffs will be enormous for our area, for both Grey-Bruce and Simcoe.

Mr Gill: Is there any environmental impact, not that I can foresee any?

Mr Comish: Not that we're aware of. Essentially we understand that there's current capacity for sewers and that sort of thing now. Of course, the developer is meeting all the requirements from the town of Blue Mountain in terms of looking after all the environmental issues that would be attendant on that kind of construction project.

Mr Gill: At the same time I'd like to move—I believe that we are in agreement. Can we? Not yet. OK.

The Vice-Chair: We have some other questions here. Then we'll get back to you on that one.

Mr David Young (Willowdale): Just before I ask my question, does the Ministry of Municipal Affairs have any comments that they wish to share with us about this proposed legislation?

The Vice-Chair: None. It's on my list here to ask.

Mr Young: All right.

The Vice-Chair: I can ask at this point.

Mr Young: That's fine.

The Vice-Chair: Would you rather?

Mr Young: I'd like to know what the ministry has to say before I pose my question.

The Vice-Chair: That's fair.

Mr Brian Coburn (Carleton-Gloucester): The process in working through this has been very co-operative. The concerns that were raised, as Mr Comish has indicated, have been resolved not only with our ministry but with other ministries. This type of project that has gone on in Quebec and in BC has been a pattern for us in getting this one on track. It's something new. We have no objections and no concerns.

Mr Young: First of all, this is very exciting. It undoubtedly will mean a great deal for the communities surrounding the proposed village, but it will also mean a great deal for the people of southern Ontario and the people of Ontario generally. There will be a great deal of employment both in construction and in the operation of this facility, and a lot of fun as well.

I was still somewhat puzzled, though, Mr Comish, why we required an act of this Legislature, as opposed to this area simply being established as a condominium development. At the outset of your comments you indicated that you were going to address it. You probably did and I probably just didn't pick it up. Am I right that the power to assert and enforce, and thereafter remove, liens is really the essence of why we have to become involved at this juncture?

Mr Comish: That's certainly one of the more important reasons for having the act. We looked very carefully at the new Condominium Act that is about to become law at some point, when the regulations get finalized, and we looked at business improvement associations and at

incorporating a non-profit corporation, which of course is what we have here now making the application, and trying to do all this—by the phrase “do all this,” I mean creating all the safeguards that are required to operate the village. We looked at that to see if we could do it all by contract. We concluded on the latter point that it was going to be a nightmare trying to contractually ensure that everyone was bound by the same rules and regulations. It works fine on your initial purchasers, but as soon as the properties start turning over, it becomes extremely difficult to make sure everybody is inside the tent.

With regard to the Condominium Act, even the new act is still premised on the basis that everyone essentially has a real property interest and therefore their voting rights and their financial obligations to the condominium relate to the real property interest. Here we have people such as commercial tenants, who pay a fee based not on their real property interests but on the revenues from their sales. We have corporate sponsors. We have such a wide variety of stakeholders that we reluctantly came to the conclusion that the new Condominium Act, although it's much more flexible than the existing one, still wasn't—

Mr Young: The right vehicle.

Mr Comish: Yes.

Mr Bob Wood (London West): I'd like to say that I think this is a very exciting project. I think it's a good bill and I endorse the bill.

I would, however, like to put one suggestion on the record. I understand a project similar to this in Quebec has a private act, and a project similar to this in British Columbia is done under a public act. I would hope the Ministry of Consumer and Commercial Relations might take a look at this issue and see whether we need a public act to permit this sort of project to proceed in the future without having to go through the red tape of a private bill. I would like to pass that along to the parliamentary assistant for transmission to the ministry or ministries.

The Vice-Chair: Are there any other interested parties that would like to comment on this or ask any questions? Seeing none, are there any other questions to the parliamentary assistant?

Are the members ready to vote? I'm getting a consensus that everyone's ready to vote.

We have an amendment to the schedule.

An Act respecting Blue Mountain Village Association: Shall sections 1 through 16 carry? Carried.

1030

Mr Gill: I move—I believe we have agreement with the parties concerned—that the first two paragraphs of the schedule to the bill be struck out and the following substituted:

“Part of lots 17 and 18, concession 1, the town of the Blue Mountains (formerly the township of Collingwood), county of Grey, designated as parts 2, 3 and 4, plan 16R-5057.

“Part of lots 17 and 18, concession 1, the town of the Blue Mountains (formerly the township of Collingwood), county of Grey, designated as part 5, plan 16R-5057.”

The Vice-Chair: You've all heard that amendment. Are there any questions on it?

Shall the motion for the amendment carry? Carried.

Shall the schedule, as amended, carry? Carried.

Shall form 1 carry? Carried.

Shall form 2 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you very much. I wish all the best to Intrawest.

ASSOCIATION OF REGISTERED DESIGNERS OF ONTARIO ACT, 1999

Consideration of Bill Pr6, An Act respecting the Association of Registered Interior Designers of Ontario.

The Vice-Chair: The second item on our agenda is Bill Pr6, An Act respecting the Association of Registered Interior Designers of Ontario. The sponsor is Bob Wood. The principal consultant is Mr Brian Hay. I'd like to ask Mr Wood if he has any comments. By the way, Mr Wood has asked for the use of some props. I've given him permission to use those at this time.

Mr Wood: We actually have distributed this to the committee members, so we may not even have to use them, but we'll use them if that's of assistance.

As the members are no doubt already aware, ARIDO has a private act now which says that if you're going to call yourself a registered interior designer, you must be a member of ARIDO. This act makes two changes that are substantial. One is to change the term from "registered interior designer" to "interior designer." The reason for that is twofold. One is that ARIDO has found that the public cannot or does not distinguish between a registered interior designer and an interior designer. Every year they run a publicity campaign inviting complaints about registered interior designers from the public. The vast majority of complaints they get are about interior designers who are not registered. A survey was done. We may as well put the thing up. All members should have a copy of this. If anyone doesn't, please let us know and we'll distribute it.

The association asked Angus Reid to do a survey of Ontarians, and what they found was that the public, by a large margin, wants anyone who calls himself or herself an interior designer to have recognized experience and qualifications. That simply supports the practical experience the association has had. They also found, however, that the public doesn't want the government to say people can't do design work, whether or not they're registered with the association. That is also what this bill does.

The second change the bill makes is to incorporate penalty sections. There effectively is no enforcement under the old, current act, and for the legislation to be meaningful there has to be a penalty if you don't abide by it, and that's introduced as well.

Those, in a nutshell, are the changes made. I'd like to introduce a number of people here from ARIDO today. We have Trevor Kruse, who is past president of ARIDO and practises in Toronto. You might wave or stand up as we introduce you here just so that members of the committee know who you are. Marilyn Donoghue is ARIDO's current president. She comes from Ottawa. Mr Hay has already been introduced. We have a number of other members and officers from ARIDO with us this morning: Kelly Stobbe, president-elect; Alex Guinan, treasurer; Peter Grimley, chair of the legislative committee.

Also with us today is J. David Holmes, acting executive director of the Ontario Association of Certified Engineering Technicians and Technologists, who is prepared to speak in support of the bill, should the committee wish to hear from him. Their organization endorses the bill.

ARIDO has also received letters and statements of support from the Ontario Association of Architects, Association of Professional Engineers of Ontario, the Consulting Engineers of Ontario, the Council of Ontario Construction Associations, the Provincial Building and Construction Trades Council of Ontario, Ryerson Polytechnic University, Interior Designers of Canada, the American Society of Interior Designers and the International Interior Design Association.

That is an introduction. I think at this point I might invite the committee to ask any questions they may have of myself. I may refer the questions to some of the folks who are with us here today who are better briefed than I am with respect to answers.

The Vice-Chair: Mr Wood, does the applicant wish to say anything?

Mr Wood: No, but we'll be happy to answer questions. They've invited me to be their spokesperson.

The Vice-Chair: You're the spokesperson and the sponsor.

Mr Wood: So we don't have a large number of presenters, but we have a large number of people here to answer questions. So they may answer the questions.

The Vice-Chair: OK. Before we go to committee members, are there any interested parties here who would like to make any comments on this today?

Mr David Holmes: My name is David Holmes. I'm the assistant executive director of the Ontario Association of Certified Engineering Technicians and Technologists, OACETT. We were here about a year ago for a similar revision to our act, and that went through at the time. We represent 19,000 certified engineering technicians and technologists in this province and have done so since 1957.

I'm pleased to speak on behalf of ARIDO, on behalf of our association in support of this bill. We know that ARIDO maintains high standards of practice for their membership. We believe that this legislation is important to the whole design community. We count ourselves as part of that community and feel that it's appropriate for all of the professions to be recognized in this kind of act.

Certainly the use of restricted titles allows the public to identify qualified practitioners who will provide quality services and with the appropriate restrictions and penalties, if necessary, to prevent inferior types of practice. We think this bill will encourage the design professionals to identify themselves appropriately and maintain and meet high standard of practice.

That said, I ask you to support this bill. Thank you very much.

1040

Mr Gill: What are your members called now?

Mr Holmes: Certified engineering technologists, applied science technologists, certified technicians. That bill originally went through the Legislature in 1984. It was amended in 1998, just one year ago.

Mr Gill: So out of the three names you mentioned, one of them is just applied science technologists?

Mr Holmes: Yes.

The Vice-Chair: Are there any other questions?

Mr Pat Hoy (Chatham-Kent Essex): I've just been handed a memorandum to the Chair, Frances Lankin. It is a question surrounding "Persons who are not members of the association will be guilty of an offence if they use the title 'interior designer.'" Have you seen this particular memorandum from leg counsel?

Mr Holmes: No, I haven't.

Mr Hoy: It states that your request is "a departure from the usual title reservation provision in private acts. Private acts generally reserve a title that is qualified, for example, by 'registered' or 'certified.'" I guess the point here is that you are simply saying the use of the title "interior designer" without really stating whether the person was certified or registered—it does state, "Fourteen such private acts have been passed since the beginning of 1990." Your particular request is at variance with all of the prior ones, and of course you're subject to a fine here that is, in my opinion, rather substantial.

Why, if indeed you are the Association of Registered Interior Designers of Ontario, did you not use "registered interior designers" in your request here, that all persons use that designation? You did not use "registered." You just said "interior designer."

Mr Wood: Perhaps I should answer that. Mr Holmes, you understand, is not with ARIDO. He's simply supporting it.

Mr Hoy: OK.

Mr Wood: The answer to that is this: The association has found that people do not make the distinction between "registered interior designer" and "interior designer" when they run their ads. Most of the complaints are about interior designers who are not registered. When we did the polling, we found the public wants the term "interior designer" to have a specific meaning with respect to qualifications and experience. The public is saying, "We want an interior designer to have defined qualifications and defined experience." It is quite true, by the way, that of the 14 surveyed, two do what we're proposing to do and 12 don't. Twelve have "certified" "registered" and so on.

The reason we're asking to remove the "registered" is that the public, first, wants the term "interior designer" to have the qualifications and experience that ARIDO offers and, second, the public doesn't seem to make the distinction. That's doubly so with those who don't have English or French as their first language. It just doesn't get through to the public.

Mr Hoy: However, within this act the association feels strongly enough that they are imposing a penalty on a first offence of up to \$1,500. Obviously someone thinks that there is a significant reasoning to go, as you state, with just the phrase "interior designer" and remove the word "registered" before it.

Mr Wood: That's absolutely correct. The answer is, the public thinks that. That's what they said in the Angus Reid survey. They want the term "interior designer" to have a meaning with respect to qualifications and experience. ARIDO's practical experience tells them that people do not make the distinction between a registered interior designer and an interior designer. That's doubly so for people whose first language is not English or French; the distinction just doesn't get through to them.

The Vice-Chair: I'd like to ask the parliamentary assistant what comments come from the government side.

Mr Coburn: There are no objections from the government side, specifically for those reasons: It's to eliminate that confusion so the consumer does have some confidence that when they hire somebody from that profession, there is competence attached to it.

Mrs Claudette Boyer (Ottawa-Vanier): I had the same question as my colleague.

On the other hand, if somebody wants to do interior decorating they can still do it, but if I hear it right, they cannot use the name "interior designer." That's the only difference. When I see "interior designer," because it's registered, they have the qualifications and they're members of the association.

Mr Wood: Your point is entirely correct. It's very important to understand that no one is prevented from doing anything other than using the term. The public is quite clear, if you go back to the survey. They don't want anybody stopped from doing this; they just want the term "interior designer" to have a defined qualification and defined experience. That's all they're asking.

Mrs Boyer: I'd like you to explain to me, when you talk about French and English, I don't see—

Mr Wood: There are quite a few people whose first language is not French or English, so they're new to this community.

Mrs Boyer: So that's what you mean.

Mr Wood: We find that those people don't always get the distinction between a registered interior designer and an interior designer. When it's not your first language—and there are a good number of people whose first language is other than French or English—it just doesn't sink in to them.

Mrs Boyer: If I go further and say, as a francophone, if you write "décorateur intérieur," that would be the translation for "interior designer," right? OK, thank you.

Mr Gill: How does one, at the present time, become a registered interior designer?

Mr Trevor Kruse: First, thank you very much for your time this morning. The members of the association that we're here for appreciate your time.

Since 1984, when our bill was passed, in order to become a member you would have to have a combination of seven years' education and work experience combined, a four-year program with three years of experience or a three-year program with four years of experience. Then you have to sit for a qualifying examination, which is a two-day international exam that's recognized by all of the interior design associations, primarily in North America.

We also, for that bill, had a grandfathering period, so people who had been practising as interior designers up until 1984 had an opportunity to become members of the association without having to have those same qualifications of education and experience.

Mr Gill: What is the membership fee?

Mr Kruse: Currently, \$542 annually gives you your membership dues and all the services that come with that, along with mandatory liability errors and omissions insurance.

Mr Gill: Just as a side issue—it may not be applicable, so I apologize if it isn't—I'm a professional engineer. As I qualify, once I get my degree I become an engineer, but after I work and I register and I pay my dues of, I believe, \$110, I become a member of the association and I can be called a professional engineer. I'm sort of trying to relate that in terms of fees, in terms of being an interior designer and then becoming a registered interior designer, sort of an analogy to the engineers. That's just a side issue, to bring that into the open. It may not be applicable.

The Vice-Chair: Are you looking for an answer?

Mr Gill: No, just a statement.

Mr Wood: We think it's a very helpful observation. Thank you.

1050

The Vice-Chair: Are there any other questions for the applicant or for the parliamentary assistant from anyone?

Are the members ready to vote?

I'll read this again: Bill Pr6, An Act respecting the Association of Registered Interior Designers of Ontario. It's sponsored by Mr Wood.

I'll ask the committee members:

Shall sections 1 through 4 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House this afternoon? Carried.

Mr Wood: Perhaps on behalf of ARIDO I could thank you and all the members of the committee for your

consideration. I think this is going to be very helpful to the association and our community generally.

The Vice-Chair: This won't stop my wife from going out and helping her friend to decorate her house.

Mr Wood: It's not going to save you any money.

DRAFT REPORT ON 1997-98 REGULATIONS

The Vice-Chair: We have one further item on the agenda for our committee members. It's a consideration of the regulations report. There's a couple of things. Brian's got a statement and this gentleman will make a comment. I think we'll call the meeting back to order and get rolling with this. Some people have to go.

Mr Coburn: As a matter of interest, at the last standing committee on regs and private bills there was a request from one of the members to get some background information on the dissolution of corporations for failure to comply with the requirements of corporate law. I have that response from the Ministry of the Attorney General. I'll just maybe table that with the clerk to circulate that information to the members.

The Vice-Chair: Mr McNaught would like to make a few comments on the last thing on our agenda. I'd like to introduce to you, ladies and gentlemen, Mr Andrew McNaught from legislative research. He will make some comments on the regulations report.

Mr Andrew McNaught: Good morning. I'm Andrew McNaught with, now, the research and information services branch of the legislative library, formerly, legislative research. You should have in front of you a copy of section 12 of the Regulations Act and standing order 106(h). The clerk has asked me to briefly outline the role of the committee in carrying out the regulations part of its mandate.

Just by way of background, the standing committee on regulations has its origins in the 1968 report of the Ontario Royal Commission Inquiry into Civil Rights, which is also known as the McRuer commission. In its report, the commission observed that a large part of the law of this province is contained in regulations made under the various statutes. The commission also noted that, in contrast to legislation, regulations are not debated in the Legislature before they are made.

In order to protect what the commission described as the fundamental civil rights of the individual, the commission recommended that the Legislature establish an independent mechanism for supervising the making of laws by regulation, and specifically it recommended that the Legislature create a legislative committee to scrutinize regulations.

In 1969, in response to the McRuer commission report, the Ontario Legislature enacted section 12 of the Regulations Act and you have that in front of you. The main provisions are that, "At the commencement of each session of the Legislature a standing committee of the assembly shall be appointed" under section 12, and that, "The standing committee shall examine the regulations"

and when doing so it is to consider the scope and method of the exercise of regulation-making power but not the underlying policies or legislative objectives. In other words, the committee is to review the way in which a regulation is made but not to evaluate the need for the regulation. Finally, "The standing committee shall, from time to time, report to the assembly its observations, opinions and recommendations."

To assist the committee in carrying out its statutory mandate, the Legislature has adopted standing order 106(h), which you also have in front of you, and this provides that in examining a regulation the committee shall have regard to the nine guidelines listed in the standing order.

For example, you'll see guideline (ii) provides that there must be statutory authority to make a regulation.

The guidelines also state that the committee cannot draw the attention of the House to a violation of these guidelines without first giving the ministry concerned an opportunity to respond to the committee with such explanation as the ministry thinks fit.

Now, on behalf of the committee, the lawyers in the research and information branch of the legislative library—that's me—review all regulations made under Ontario statutes each year and in accordance with the committee's mandate this review is conducted by applying the guidelines contained in standing order 106(h).

Potential problems with regulations are identified and letters are written to the relevant ministries inquiring about the regulations in question. Once we've received responses from the ministries, a draft report is prepared for the committee and that brings us to the draft report which you also should have in front of you today.

That report is a report on regulations made in 1997 and 1998. As indicated in the covering memo, the report is divided into five parts.

Part 1 briefly outlines the committee's mandate; part 2 contains some statistics including a comparison of the number of regulations filed between 1989 and 1999; part 3 is a discussion of regulations that potentially violate the committee's guidelines on regulations; part 4 is a summary of a recent Supreme Court of Canada decision in the *Eurig* estate case, which involved some of the principles that are expressed in the committee's guidelines; the last part of the report contains appendices that set out the committee's terms of reference and some further statistics.

The substance of the report is in part 3, which is the section on regulations reported and you'll find that at page 3 of the report.

It begins by noting that we've reviewed the more than 1,200 regulations that were made under Ontario statutes in 1997 and 1998 and that we raised concerns about 28 regulations with eight different ministries.

After examining the responses we decided to comment on 13 regulations and the committee's comments are arranged by ministry and involve the four guidelines you see listed on page 3.

With respect to the regulations falling under the jurisdiction of the Ministry of Agriculture, the Ministry of Health and the Ministry of Transportation, the ministry in each case has acknowledged that there was a problem, or at least some uncertainty, and that corrections will be considered the next time the regulations in question are revised.

1100

That leaves the regulations made under the Ministry of the Attorney General and the Ministry of Finance, and it's these sections of the report that I would draw the committee's attention to today.

The section on the Ministry of the Attorney General you'll find at page 6. It deals with two regulations made under the Administration of Justice Act. These regulations set the fees payable by those who file a claim in Small Claims Court. For this purpose, the regulations distinguish between frequent claimants and infrequent claimants. A frequent claimant is defined as someone "who files a claim in a Small Claims Court office" and who has already filed at least 10 claims with the court in that calendar year. An infrequent claimant is simply someone who has filed fewer than 10 claims in that year.

You'll see from the table at the bottom of page 6 that the fees prescribed by the regulations are significantly higher for frequent claimants. We raised the concern with the ministry that the higher fees appear to penalize frequent claimants in an attempt to discourage claims by a particular claimant. This would constitute a violation of committee guideline number 6, which prohibits the imposition of a penalty by regulation.

The ministry, in its response, explained that infrequent users are usually individuals or small businesses, whereas frequent users are generally larger institutions. So on the basis that it would be fairer to ask that larger institutions assume a greater share of the funding of the Small Claims Court program, the ministry decided to set higher fees for frequent users.

Our view, as we set out in the report, is that the committee's guidelines are concerned with the effect of a regulation and not the policy underlying it. Since the effect of the higher fees for frequent users is to impose a penalty on such users of the Small Claims Court, it would appear that the regulation violates the committee's guideline against the imposition of a penalty by regulation.

At the end of that section, you'll see that we've asked the committee whether they want to include this issue in the report or to exclude it from the report altogether. I don't know if that's a decision that'll be made now or if you want to look at it later and we'd come back another time.

Mr Young: I must confess I'm not particularly familiar with this process, but it would be beneficial for me to have an opportunity to consider the contents of the report and the submissions made by the deponents now or the individual presenting it. That would be my inclination, unless there's some compelling reason for dealing with it today.

The Vice-Chair: We can defer this.

Mr Young: Yes, that would be my preference. I'm prepared to hear from others before we make a final decision.

Mr Hoy: I can, in my brief look at this, say that it would appear that the definition of "frequent claimant" is probably a problem from your view. There's a general understanding of what the government is trying to do, but the interpretation is not very clear. If the committee wants to reserve on a decision to make judgment on this particular recommendation within the regs, I'm willing to wait, but I can understand in this brief interlude what the problem is with this regulation of the Attorney General.

What is the main concern? Is there a brief explanation? You said it was rather lengthy on ag and food. Page 4.

Mr McNaught: Yes, that is a very involved issue.

Mr Hoy: All right.

Mr McNaught: At the end of the day, you'll see at the end of that section on page 6 the Ministry of Agriculture agreed that there could be some uncertainty with that with the provisions we've identified, that they're in the process, I gather, of drafting some new legislation and that they would take into account the issues we raised. We've sort of left it at that.

Mr Hoy: So you're going to move regulatory power to legislators?

Mr McNaught: They're going to clarify the existing regulation-making powers.

Mr Gill: Another way of looking at the Ministry of the Attorney General fee schedule, if you want to call it that, is that the frequent claimant fee is \$120, but there's an incentive, not a penalty, if you are an infrequent user; your fee is less. Instead of saying we penalize the frequent user, we are really saying—one can look at it positively and give it that spin.

Mr McNaught: That's what the ministry tried to explain. We're just saying, regardless of how good the underlying policy might be just from a technical point of view, it appears that the frequent user is being penalized for making greater use of it.

Mr Gill: I agree. I think we should defer it if we can review this thing, unless there's an underlying urgency right now.

Mr Wood: Not being a regular member of this committee, I'd like leave this thought with you. The Red Tape Commission is interested in these issues as well. If you run into a situation where a regulation appears to create a red tape problem, I hope the committee won't hesitate to send that problem to the Red Tape Commission and we'll see what we can do with it.

I also hope the committee, if they want input from us at some point, will take this as an offer to call on us. We'll come down and try and offer what helpful advice we can. We work in a similar area and we hope that we'll be considered a resource to help you in your work.

The Vice-Chair: I appreciate that. I'm getting a feeling—would people like to see this deferred at this time?

Mr McNaught: There's just one other section I was going to draw to your attention. Then you can go away and think about it. That's at the bottom of page 7, the section on the Ministry of Finance. In that section we discuss two regulations made under the Fuel Tax Act and the Gasoline Tax Act. These provide for the implementation of an international fuel tax agreement. These regulations were filed on January 24, 1997, but were deemed to come into force on January 1, 1997. In other words, they have a retroactive effect. Committee guideline number 4 provides that regulations should not have a retroactive effect unless clearly authorized by statute.

In some provisions of the Gasoline Tax Act and the Fuel Tax Act, there is authority to make regulations that have a retroactive effect. However, we were unable to find that authority in the particular sections under which these two regulations in question were made. The ministry's explanation appears to be that, because there is authority in other sections of these statutes to make retroactive regulations, this should be interpreted to be sufficient authority for any regulation made under the act to be retroactive.

We've set out some of the legal principles that you would apply in analyzing legislation, and in particular retroactive legislation. You'll see that on page 8 and page 9. Based on these principles, it's our view that in order for a regulation to have a retroactive effect, there must be specific authority in the section under which that regulation is made. As we could not find such authority in the two regulations that we've identified here, we've raised them as potential violations of the committee's guideline on retroactivity. Again, that's an issue you can take away with you.

Mr Gill: What is the financial impact of not having made it retroactive? Do we know?

Mr McNaught: I don't know that.

Mr Gill: That's a consideration, I'm sure.

Mr McNaught: It's not a consideration of mine.

Mr Gill: No, not right now. I'm interested in knowing that.

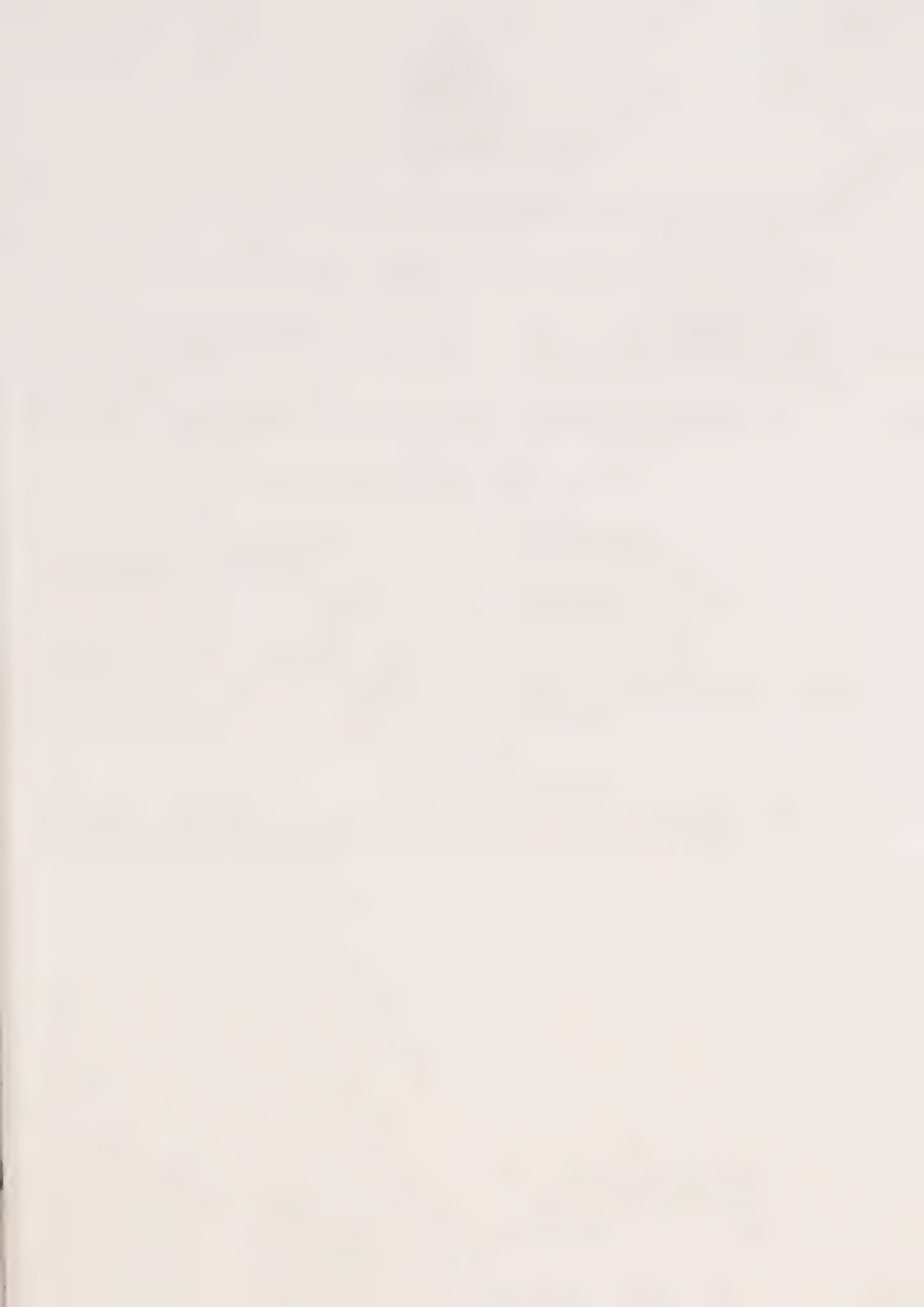
Mr McNaught: I have no doubt that would be one of the reasons it was made retroactive, but I'm not privy to that.

Mr Young: I'd like to move that these matters be deferred to our next meeting. That's in June, isn't it? July? I'd just like to put it off to the next meeting, whenever that may be.

The Vice-Chair: Is it the wish of the committee to follow up on that motion, to our next meeting, which is at the call of the Chair? Do I hear that agreement? Agreed.

This meeting will be adjourned until the call of the Chair for the next meeting. Thank you very much, everyone.

The committee adjourned at 1110.



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**Standing committee on
regulations and private bills**

**Comité permanent des
règlements et des projets
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 22 December 1999

Mercredi 22 décembre 1999

*The committee met at 1008 in committee room 1.*MUNICIPALITY OF
KINCARDINE ACT, 1999

Consideration of Bill Pr15, An Act to change the name of The Corporation of the Township of Kincardine-Bruce-Tiverton to The Corporation of the Municipality of Kincardine.

The Chair (Ms Frances Lankin): We'll call the meeting to order. Good morning. Those of you who have travelled to join us, I appreciate your waiting. Sorry for the delay. We'll begin now.

The first item of business on our agenda is Bill Pr15, an act respecting the municipality of Kincardine, and Mr Murdoch is presenting that. Would Mr Murdoch and the applicants come forward to the table, please?

Mr Bill Murdoch (Bruce-Grey): My name is Bill Murdoch and I introduced this private bill about a week ago or so. It has to do with the municipality of Kincardine. Under restructuring in Bruce county, they restructured down to eight municipalities. This municipality didn't have its official name, so they had a vote and had this name picked out. Because it wasn't done originally when they restructured, it has to have a private bill.

I'm the neighbouring MPP for that part of Bruce county. Part of my riding is in Bruce county, but not this part. Helen Johns is the member there. She's a minister, so she can't introduce private bills, so it was left up to me. I was approached by the municipality to do this and I did it. It's been introduced and that's why you have people here today. That was my job.

The Chair: Could I ask the applicants and representatives who are here if you could each introduce yourselves, first of all.

Mr George Magwood: Thank you, Madam Chair, honourable committee members. My name is George Magwood. I'm a solicitor in private practice in what is now known as the municipality of Brockton, formerly the town of Walkerton, which is in Bruce county.

I'm also solicitor for the applicant municipality which is the subject of this bill. I have assisted them throughout the process in terms of providing legal advice; also with respect to the process involving this bill, drafting it in this first instance, dealing with legislative counsel and preparing the compendium. If permitted, I will be making some remarks.

With me today are Gordon Jarrell, mayor of the municipality, and Rosaline Graham, the clerk of the municipality.

The Chair: Thank you very much, and welcome to all of you. Do you have some introductory remarks you would like to make?

Mr Magwood: Thank you very much, Madam Chair. First of all, I've never been in front of this committee so I'm in your hands with respect to procedure.

It reminds me of quite a few years ago when Mr Murdoch was a member of Grey county council and the chairman of the land division committee. I was appearing in front of the committee and giving my client the best shot with respect to an application for severance—

The Chair: Sorry, this is Mr Murdoch? An application for a severance?

Mr Magwood: Exactly.

The Chair: I can only guess what the results would have been.

Mr Magwood: In about 15 minutes he put his hand up and said, "Mr Magwood, we're probably inclined to grant your application, but if you keep talking we might change our minds." I hope you'll give me the same courtesy.

Just by way of background, first of all the bill itself is probably, I guess I can say, a model of brevity and clarity. Obviously, it has one operational section, which is to change the name of the municipality as it legally is to that requested.

The reason for the change—I guess we can go back, if you wish, briefly in history. Bruce county was created probably well over 100 years ago literally out of the wilderness by what was then the province of Upper Canada, even pre-Confederation.

Originally, it was connected with Huron county. It was given separate status, and the townships were created by the crown surveyors. Two of those townships were the township of Kincardine and the township of Bruce, neighbouring municipalities along the shores of Lake Huron, Bruce to the north and Kincardine to the south; very proud municipalities and the names, as you can see, closely associated with the Scottish settlers at the time.

As settlement patterns basically were created and were opened up and the area was settled, local municipalities were created from the townships, two of those being the town of Kincardine, at the mouth of what is known as the Penetangore River on Lake Huron, and the village of

Tiverton, which was created out of part of Bruce township, a little bit to the north.

The structure of the county of Bruce was pretty static. The Bruce Peninsula was added subsequent to its creation by way of the surrender of lands from the native people at that time. Local municipalities were created throughout the county, reaching approximately 34 municipalities participating in county council for probably the best part of 100 years.

Prior to the amalgamations Mr Murdoch has made reference to, there were some, I guess we can say, consensual amalgamations of some of the smaller villages, and basically at the time of the major county restructuring there were 30 municipalities that were subsequently reduced to eight.

The village of Tiverton and the township of Bruce had actually amalgamated one year prior, on January 1, 1998. Hence, Tiverton no longer exists but became part of the township of Bruce and continued under the name of the township of Bruce. That is why the name "Tiverton" is referred to in the overall bill, because it was part of the previous municipality. That happened, I guess we can say, consensually. Those municipalities presented their own restructuring request to the Minister of Municipal Affairs. It was granted. A second municipal restructuring, which was county-wide restructuring, was effective on January 1 of this year, 1999.

The restructuring order which created the eight municipalities also designated the names. There was no discussion at that level, obviously. The minister's name for this municipality is the one that you see in the bill, The Corporation of the Township of Kincardine-Bruce-Tiverton. There was a very summary method in the restructuring order to change that, and the other municipalities within the county of Bruce availed themselves of that. They had the time to do it. It just involved some public participation, a resolution of the transition team created by the restructuring legislation and a request to the minister, and he amended his order. But the legislation was structured such that it had to be the transition team passing the resolution and making the request. They automatically became functus, or by law disappeared, at midnight December 31, 1998. Thereafter, of course, they didn't exist; they couldn't do anything.

In this case, because of some opposition to the actual restructuring legislation and court challenges, which I've referred to in the compendium, which actually ended up at the level of the Ontario Court of Appeal in about October 1998, the transition team just didn't have the opportunity or the ability to deal with the name. It wasn't the smoothest of transitions, I guess we can say, because of the legal transition. So they were the only municipality in Bruce county that couldn't avail themselves of that summary procedure. That, therefore, is the reason we're here today. There was no other way to do it, other than if they wished to actually change their status to a town, there was an ability to apply to the Ontario Municipal Board. But that was not the wish, so that's why we're here and the bill is before you.

The other thing I'd like to add is that the Bruce county restructuring, depending on the eye of the beholder and who you're talking to, was not an imposed restructuring, but I think a lot of people might think it was. It was in fact a restructuring brought about by the amendment to the legislation, the Municipal Act, which allowed local municipalities to basically do their own thing, come up with their own plan and present it. This was done by Bruce county council, which of course, as I said, was the representative of all 30 municipalities at the time, following the formula of the triple majority, as it's called, and based on a committee report and adoption by Bruce county council, all the local municipalities and the reeves, and submitted on that basis to the Minister of Municipal Affairs as a local option type of restructuring. That's how Bruce county became the way it is today.

The word "democracy" of course means all things to all people, but it was done democratically by elected representatives based on the legislation that this House, your assembly, created and the mechanics that you created to allow that to happen by local municipalities.

Having said that, that's how the name got its official status. It wasn't something that was chosen locally; it was something that was put in the bill. Like all municipalities, they were combined names. I have put in the compendium for your information, just so you can see what the other municipalities did. Some of them created combined names, and some of them created brand new names. They've all been approved by the minister under the current existing rules, which allowed the transition team to do that. That left, as I said before, Kincardine-Bruce-Tiverton. Because of their late start, if you want to call it that, they didn't have that opportunity.

Those are my remarks with respect to some of the background and the legal application of why we're here and why it's necessary and how the name was created.

Mr Jarrell, the mayor, of course was involved first of all as the reeve of the township of Kincardine, as a member of the transition team and as the first mayor of the new municipality. He has gone through the whole process at every level. He would like to address the committee, if permitted, to talk about the selection of the name and how it came to be, the name that is referred to in the bill.

1020

Mr Gordon Jarrell: Madam Chair, honourable members, I would like to add a few words on this, because it has been a most interesting and sort of chaotic process.

Back in the transition, we were late getting off the ground. As Mr Magwood has alluded to, we were under court challenge, and so it was into October before we had our meetings. We recognized that the name was one of the most important things we had to get established, so instead of the transition board naming, we elected to use a citizen committee to perform this task for us. Instead of worrying about representation by population, we have the three wards—the town of Kincardine, the township of Kincardine and the township of Bruce—so each of those

municipalities appointed two members to the citizen committee, for a six-member committee.

They started working, I would say, about November. In January they brought in a list of names to the council, and unbeknownst to the council they had elected to eliminate virtually all the original names and come up with new names.

Our suggestion to them, which we had basically stolen from the municipality to the north of us, Saugeen Shores, was to get a marketing name, something that would be good for economic development, something we could use as a marketing tool.

The committee came in with what we thought may be almost retirement names: Bluewater Shores, Gaelic Winds—and I should make a comment on this one. The papers had tremendous fun with “Gaelic Winds,” if you can imagine a piper with flatulent air, and this was published all over the local papers. There were Piper Shores, Sunset Beach, Sunset Shores. They did put the name Kincardine, and Kin O’Bruce. We, as a council, were not happy with this selection. We didn’t feel it did for us what we were after, so we requested of the committee if they would kindly reconsider, take it back, do a little further study and not force the elimination of any names, that they give all due consideration.

We ended up, as a result of that, with a few resignations. But again, the member replacements were taken on the same basis: the ones from ward 1 replaced their single member; ward 2 had to replace both members; and ward 3 had to replace, I believe, one member. But we had the committee back again and the same chairperson.

Later they came in with a list of names, and this would have been about the end of June or July. They were Kinbruce, Kinbruton, Kincardine, Kincardine-Bruce, Penetangore and Scotslandng.

There was some discussion at council: “I wonder why they didn’t bring in “Kincardine-Bruce-Tiverton?” I suppose I can take part of the blame for this. It was a long, unwieldy name and I had to abbreviate it to KBT, which rolled off the tongue fairly well. The committee had considered it, because we did ask them to, and they thought no, they didn’t really want to recommend it, so they didn’t. There was some query from council, “Could we add it?” Yes, as council we could, but the majority of council decided no, we should not tamper with the democratic process of the committee from the three municipalities that had made the recommendations. So those names I just read were the names that were put on the ballot.

It’s interesting that we’re being told we didn’t really advertise it properly. I’m sure the clerk will address this. We advertised in the three local papers, the two in Kincardine and the one in Port Elgin, which reach the majority of the area. We had some concern about the area immediately to the northeast of our municipality. Paisley, which is the closest community, doesn’t have a weekly paper, so we couldn’t advertise there.

I was rather surprised, because I expected at the fall fairs to see some move to incorporate and urge voters to

go in a specific direction, whatever that direction might be. There was none.

Council were not out beating the drums for anyone. When I spoke at different functions and several banquets—as you know, mayors get nominated for these jobs—I always, prior to that election, raised the question: “Don’t forget October 4. Get out and vote. Remember the names. Pick the one you want and represent it.” So I think the democratic process was followed. The voting pattern was down somewhat, but if we look, ward 3, which was Bruce township, voted about 19.5%; in the last municipal election, the year before, the one I was elected in, they came in at about 38.5%. Kincardine township on this name vote voted 20%, which is very close, and 36.5% in the one before.

So there seemed to be a parallel. There didn’t seem to be any great discrepancy in the percentage turnout of voters at the election. So I was most surprised to hear of the objections being raised to it as not being a democratic process and being confounded in one way or another. As a council we certainly had no intention to do that, and we don’t think we did.

Mr Magwood: Madam Chair, as Mr Jarrell has indicated, council elected to put the names recommended by the committee to the electorate. It was done by way of a special question, pursuant to the provincial Elections Act. The election was held on October 4 and of course the results certified, and they’re in the compendium. The process of administering that election, as required by law, fell to the clerk of the municipality, Rosaline Graham, and she would like to address the committee with respect to that process involving the timing, the advertising, the counting and of course the results.

Ms Rosaline Graham: Madam Chair and honourable members, in accordance with 65(3) of the Better Local Government Act, Bill 86, amending the Municipal Elections Act, a by-election is to be conducted as far as possible in the same way as a regular election. For the election, the clerk can give notice. Any notice or other information that is required is given by the clerk in a form and a manner that the clerk considers adequate to give reasonable notice or to convey the information, as the case may be.

As the mayor and Mr Magwood have alluded to, we did give notice, and you can see that we made a big effort to make sure we had large notices. In fact, the newspapers were really happy with us for doing this. We gave three consecutive weeks’ notice. We were required to conduct the by-election within a 60-day time frame.

The extra effort we made was to ensure that our summer residents would be able to vote, and a lot of those live in the township of Bruce. So we held an advance vote on September 25. At the actual vote, we used electronic voting equipment. For the vote itself, in the township of Bruce, “Kinbruce” received 130 votes, “Kinbruton” received 31 votes, “Kincardine” received 14 votes, “Kincardine-Bruce” received 153 votes, “Penetangore” received 12 votes, and “Scotslandng” received 39 votes. So each name was considered.

I believe the municipality did make reasonable effort to advise the people and to give them an opportunity to decide on the name. I believe the process was thorough and that we have demonstrated this at this time.

The Chair: Ms Graham, I'm sorry. Would you just read the results again? I'm having trouble following.

Ms Graham: This was in Bruce township only, OK? I just want to—

The Chair: Oh, I'm sorry.

Ms Graham: This is the whole election. This is the total vote. No, in Bruce township, sorry.

The Chair: Thank you. I just got confused that it appears to be different from the compendium.

Ms Graham: I just wanted to let you know that they did vote for every name in Bruce township too.

The Chair: That's what was confusing me. Do you want to read into the record the overall results? I think that would be helpful for the Hansard record.

1030

Ms Graham: The overall votes: "The municipality of Kinbruce" received 367 votes; that was 13% of the vote. "The municipality of Kinbruton" received 62 votes; that was 2% of the vote. "The municipality of Kincardine" received 1,607 votes; that was 59% of the total vote. "The municipality of Kincardine-Bruce" received 521 votes; that was 19% of the vote. "The municipality of Penetangore" received 117 votes; that was 4% of the vote. "The municipality of Scotslanding" received 96 votes, which was 3%. There was a total number of votes of 2,770 votes altogether.

I'd also add that we made other efforts by contacting the local radio station. I know the mayor was interviewed and actually even CBC were in the area at the time and did a blurb on it. I think we made a good effort.

The Chair: May I just welcome Minister Johns, who is also the local MPP for the area involved, who has joined us today. Welcome.

Mr Magwood was there anything further?

Mr Magwood: I think that's basically our presentation.

In summary, the only thing I would really like to emphasize to the committee is that I believe, and I think it's evident from both the submissions of Mr Jarrell and Ms Graham, that every effort was made to really involve the community in the selection of this name both by the transmission team and, if you want to call it, the contest they had before the local committees that were reporting and that came back to the council.

When you think about it, first, I guess this name could have been selected by the transition team on a resolution made behind closed doors and that would have been it, to a certain extent. That didn't happen. It could've actually been made by the new council. They could have, as they did, of course, brought the bill forward just on their own resolution. That didn't happen. We actually had a real election: one person, one vote, under the laws of our province as to how these elections are to be held. I don't think you could get any more participatory involvement in a process than that.

And not only that; the results were respected. Referendums, if you want to use that word, are not binding. I suppose council would have had somewhat a lack of credibility if they chose not to follow the winning name, but obviously they did.

So it comes to you not only as the name selected by every person living in the municipality who had the right to vote and did vote; it also comes to you by the local elected representatives of that municipality on their motion to you for this legislation to be approved. I would hope you would have no concerns with the fact that the public consultation was not to the highest degree.

With that, subject, obviously, to the response you have from the other people here and questions to us, I believe that completes our submission. I request that you give the bill satisfactory consideration and recommend it for third reading. Thank you very much.

The Chair: Thank you, and there may well be questions from the committee members after we hear from other interested parties.

I understand that there are other interested parties who would like to make presentations with respect to this. Could I ask that the applicants vacate the table just for a period of time and other interested parties come forward.

Welcome. May we begin by going along the table and asking each of you to identify yourself, your names and the communities you come from.

Mr Lynn Caldwell: I'm Lynn Caldwell. I live in Bruce township, the northern part of our amalgamated municipality.

Ms Ellen Zavitz: My name is Ellen Zavitz. I live in Bruce township.

Mr Jack MacGillivray: Jack MacGillivray. I come from Bruce township.

Mr John Ribey: John Ribey, from Kincardine-Bruce-Tiverton. Jack and I are co-chairing here. We represent a sizeable group of people from Kincardine-Bruce-Tiverton who are opposed to this name change. As many of you may be aware, we—

The Chair: I'm sorry. Could I interrupt you for a moment? I realize there's only one mike there. Sorry, we're not set up appropriately. You can share it as you go along this morning.

Mr Ribey: Can you hear me?

The Chair: Yes, thank you.

Mr Ribey: We represent a group of concerned residents from Kincardine-Bruce-Tiverton and we are obviously opposed to the changing of the name to the municipality of Kincardine. Some of you, I presume, are aware that we have lately done a petition in the municipality and have submitted that petition to this committee. We had over 1,100 names on it. That's a significant amount, we think, and we were very pleased with the response we got as we circulated the petition.

Some of you, as I say, may have read this petition. I'm going to ask Lynn to read that to you.

Mr Caldwell: This was addressed to the committee members:

"We the concerned ratepayers of Kincardine, Bruce, Tiverton hereby present the following petition of over 1,100 signatures supporting the following:

"Bruce-Tiverton has been our home and a vital community for almost 150 years. As part of that community we the ratepayers of Kincardine-Bruce-Tiverton believe that the proposed name change to 'The Corporation of the Municipality of Kincardine' ignores and excludes a significant part of our identity and our heritage and therefore oppose the name change. We feel the name should reflect the attributes of all three communities, and therefore endorse the name KBT (Kincardine-Bruce-Tiverton)" which we've operated under for approximately a year.

Going to some of the significant impacts that Bruce township has to offer as part of this municipality, we have some significant industries that contribute greatly to all three of the municipalities, those being the Bruce Municipal Telephone System, the Bruce Energy Park, Bruce Tropical Produce Inc and Bruce Pasture Farm. We have the Bruce nuclear power plant, from which a lot of people from our area have received a substantial amount of their income over the past number of years.

The abovementioned industries, plus RKM, which employs a significant amount of people—it's the second largest employer in Bruce county—are the driving force behind the amalgamation in this municipality.

Going back to BMTS, on March 11, 1911, our forefathers of present-day residents of Bruce township pledged their farms as security should the venture fail, and in turn formed the highly successful Bruce Municipal Telephone System, which we have today, and it's probably one of the largest privately owned telephone systems in the industry.

We have contributed to three community centres, a sports complex, a library, a medical centre, and a fire and rescue department to serve the new municipality. We have two parks, Inverhuron and Bruce Dale, which are both in Bruce township.

Although Bruce township and Tiverton population is not as large as Kincardine, they are a very loyal and community-minded group of people, situated on a land base approximately half of the amalgamated municipality. The distribution of eligible voters throughout the three wards left ward 3, Bruce township, at a huge disadvantage.

Anyone who has read the Bruce township Tales and Trails, published in 1983, illustrating pioneer life and the hardships they endured, would certainly agree that it would show little or no respect or honour to those who have gone before us to remove "Bruce" from our identity.

1040

The Chair: Thank you, Mr Caldwell. Could I just indicate to you all that the committee members have copies of the letters that have been submitted by yourself and by other interested parties from the area, and the committee has a copy of the cover letter of the petition, not the full petition, just so everyone understands that the

clerk's office has received the full petition with all the names you have referred to.

Ms Zavitz: Madam Chair and honourable members, this committee of concerned ratepayers proposes that we retain the name we've been using since the amalgamation took place: Kincardine-Bruce-Tiverton, or KBT. Our reasons are many. First of all, we feel that the name KBT represents all three communities, whereas if the name Kincardine is adopted, two of our most important areas are forgotten.

Bruce township boasts Bruce Nuclear Power Development, Bruce Municipal Telephone System, RKM Wood Products, the Bruce Energy Centre, two parks and a thriving cottage industry. Tiverton boasts a new arena, community centre and a wonderful fall fair, as well as small town flavour. Kincardine does well with tourism but is really a bedroom community.

The name KBT includes the three areas: "K" for Kincardine and Kincardine township, "B" for Bruce township, and "T" for Tiverton. Could it be any more simple than to leave things the way they are? The name Kincardine alone does not reflect the common attributes of all three communities.

We feel the town of Kincardine is thinking only of itself. Every other amalgamated community in our area has either chosen a brand new name—for example, Saugeen Shores—or a combination of names, for example, Brockton. Why should the people who have lived here for generations be left out and not be recognized at all? We feel that should not have to happen.

The council of KBT have taken it upon themselves to go full-steam ahead with their new name and have already changed letterhead, bag tags and dog tags, but it is our understanding that the name has not been passed in the Legislature, so how can this be legal?

Council, in our estimation, did not follow its own guidelines when deciding to let the name Kincardine stand on the ballot. How could the outcome of a vote be any different when the population is so one-sided? A fair vote? We think not.

We are asking for your consideration when making a decision that could so badly reflect on our residents. The confusion that could result could be overwhelming. Our concessions would have to be changed, not to mention street names and 911 numbers etc.

Mr Caldwell: There is one other thing I was going to point out. I brought a little map along with me for those of you who may not be familiar with the area.

It's approximately 30 miles from the town of Kincardine to the outermost, farthest area that would be part of our amalgamation. For that reason it would seem very unfair, when you have Kincardine down in this area and Bruce up here, not to have all three representing a common thing, which I think would—I heard the comment made about marketing. I think people who would come into our area would readily be able to identify where they're going and it would still promote

tourism, which is a major part of our summer industry and growth for the income we get in the summer.

Mr MacGillivray: Madam Chair and honourable members, I would just like to add a few comments to what already has been said.

Most of our members here today are from generations of people who have lived in the area all their lives. It's very important to them to retain our name. Bruce county and Bruce township are names that have been here for a long time. I think we've been very fair when we included Kincardine first, Bruce and then Tiverton.

For myself, my son is the fifth generation in the township, and this holds true for many of the other people here today. We feel there's something wrong when we see trucks in Kincardine now with the name "Kincardine" on them, when we are still KBT. This has not been settled, but I would like an explanation from somebody why we have "Kincardine" on dog tags and on garbage bags. To me, there's something wrong.

I don't think I have anything further to say. I endorse everything that has been said. If I can answer any questions, I'd be willing to try my best. I've been here for a long time and I hope the rest of us will be here for years to come.

The Chair: Thank you very much. Before I go to committee members for questions, I'd like to ask the parliamentary assistant if the government has any comments.

Mr Brian Coburn (Carleton-Gloucester): As you've heard, the restructuring order took effect January 1, 1999. Unfortunately, the name wasn't able to be decided at that time. We have no objections. We see no objections to the proposal from any of the ministries. Our ministry has no objection to the proposal. We have received four letters from members of the community objecting to the proposal.

The Chair: I'm going to go to questions at this point in time. There are four interested parties and there are three representatives of the applicants, so we may have to juggle chairs back and forth to allow you an opportunity to answer questions.

Mr David Young (Willowdale): I appreciate the opportunity of posing a few questions. I want to start by thanking all the deponents who came down today, before Christmas, to express their views. It's a lot easier for us around this table to understand the nuances of these issues when you're here to express them as you have done. I'm sure the other committee members all appreciate your attendance here today.

A couple of questions, and I'm not sure if they're best answered in totality by the people currently at the mike.

The first one is this: In ward 3, which is the Bruce-Tiverton area, do we have some idea of the population that would be of voting age?

The Chair: Could I just ask that Mr Jarrell and Mr Magwood perhaps join us up here at the table, if we could make room.

Ms Graham, perhaps you might have that information. We're looking for eligible electorate number from the ward 3 area.

Mr Young: Am I right that ward 3 is the Bruce-Tiverton area?

Mr Jarrell: Yes. I can give you the precise numbers on that for the eligible voters. There are 2,439.

Mr Young: Of that number, how many cast ballots in this referendum-type question?

Mr Jarrell: It was 467 who cast ballots.

Mr Young: Thank you very much.

The other questions I have, and I don't have too many more, are for the other delegation that has come down. I have had the opportunity, over the last few minutes only, to review this petition in its entirety. I appreciate your providing this to us. My questions are a reflection of the fact that I'm from Willowdale and not from the much prettier part of the province where you folks reside. Tell me, if you would, where Paisley is and Port Elgin and places like that? Those are in ward 3, first of all?

Mr Caldwell: No. May I just show you this map? It might clarify it a little bit. Port Elgin is up here; which is Saugeen Shores now. Paisley is approximately there. This is the area all along Saugeen Shores. The nuclear power plant is in there and the energy centre is there. Tiverton is approximately in the middle. Kincardine is in this area.

Mr Young: Thank you very much; that's very helpful. The map answers some of my other questions, and maybe I can just put this on the record. It seems as though—and you folks will correct me if I'm wrong—Port Elgin is outside of the municipality we're here discussing today. Do we agree on that?

Mr Caldwell: Yes.

Mr Young: All right. Similarly, Southampton is outside, and that's another area that we see reflected or identified as the residences of some of the people who have signed this petition. I think you'll find, if you go through it, that there are some. Then finally, Paisley, as I indicated earlier—

Mr Caldwell: Can I speak to that? I believe you'll find that some of those are landowners within Kincardine-Bruce-Tiverton and live outside of the municipality.

1050

Mr Young: Could be. I'm just telling you that as I review these pages, many of them have signatures from people who have identified themselves as having a residence in Paisley, Southampton and Port Elgin. So that helps me to understand that these people do not necessarily reside in the subject municipality. Is that right or wrong?

Mr Caldwell: May I clarify that? Paisley post office serves over a third of Bruce township and Port Elgin post office serves another portion. That is another reason you may get some addresses of Port Elgin and Paisley.

The Chair: Ah, to be from Willowdale and not understand rural life.

Mr Young: We have similar problems, but they involve Downsview and Don Mills. If you use that analogy, I'd be all right.

The Chair: Mr Caldwell, perhaps I could be of some assistance here, I think the intent of the question is for us to understand whether the entirety of the signatories to your petition are from people who reside within the affected area, within this new municipality.

Mr Caldwell: Half of Bruce township is served by Paisley/Port Elgin post office, which might clarify that.

Mr Young: I suspect you're here saying it's your understanding that most of these people reside in the subject municipality; there may be a few who don't. Is that what you're here to say? OK.

Madam Chair, is this an opportunity for comments as well on our part?

The Chair: No. At this point, could we just proceed with questions to the applicants, the interested parties or the parliamentary assistant? We'll have an opportunity to debate after that.

Mr Young: I'll withhold my comments. Thank you very much.

Mr Dominic Agostino (Hamilton East): A couple of questions with regard to the breakdown of the population. You've given the numbers for ward 3. There are three wards. What is the population breakdown of the other two?

Mr Magwood: In our compendium on the very last page, actually, if it's been distributed, is the information the member is requesting. There's a chart.

Mr Agostino: Just a rough number so I can get a sense of the percentage of the population.

Mr Jarrell: I can give that to you very easily. The total is 10,875: Ward 1, which is the town of Kincardine, is 5,405; ward 2, which is the township of Kincardine, is 3,031.

Mr Agostino: Thank you. A question on the notification process for the—the clerk suggested that this was run under the Municipal Act that applied to this. In a general municipal election, would there be a notification that would go to each individual eligible voter in the area?

Ms Graham: You're talking about voter identification lists?

Mr Agostino: Right.

Ms Graham: In a general municipal election, yes. This municipal election was a by-election. It was done in a very short period of time. We did consider sending out voter identification notices. I think the access, as far as possible, should be done as a regular election. We had to deal with our software people. The notices would have been very late going out, had we sent them out. It wasn't a requirement. We spoke with Municipal Affairs about it. This was not a requirement, so we actually published larger, bigger advertisements. We published them for three consecutive weeks in the three papers that served the area. In a normal election, we'd probably publish them for one week.

Mr Agostino: So it would be fair to say that not everyone in the area would have had—I understand that you did the notice and that you did three of them, but it was not the same process that would be used where every individual resident or citizen would receive a notice advising them to vote and so on, as normally would happen in a municipal election campaign.

Ms Graham: It was a by-election we were conducting, and that's what we did.

Mr Agostino: OK, that was just to clarify that.

In regard to the name change, a question was raised by the residents here about the process for the name change, and I was just curious. There were suggestions that the name on the trucks, for example, or other services and things provided by the township and the municipality already had been changed. Can I ask the rationale for that and if that decision pre-empted this decision to be made by the Legislature?

Mr Jarrell: Rosaline may come on after and maybe can correct me if I'm wrong. All legal documents are still being processed under "the township of Kincardine-Bruce-Tiverton." K-B-T was never a legal name. What we have done in a few—particularly where we've acquired new trucks, rather than repainting the doors, yes, we have put "The Municipality of Kincardine."

Ms Graham: With respect to dog tags and stuff of that nature for the year 2000, obviously we have to order them beforehand; you'd be amazed at how many people come in and want next year's dog tags. So we did order them with "The Municipality of Kincardine."

Mr Agostino: Just a final question, through the Chair: Would it be appropriate to ask the position of the local member on this?

The Chair: That's a good question. I'm not sure if it would be appropriate to impose upon Ms Johns at this point in time. If you would like to comment, you're certainly welcome to. Ms Johns, you may want to wait until we have debate on the bill, or if you would like to offer your opinion now, feel free.

Hon Helen Johns (Minister of Citizenship, Culture and Recreation, minister responsible for seniors and women): I think I'll wait until we have the comment, but let me just preface this by the fact that a lot of this was going on through the election. As you know, I'm fortunate enough to be representing this part of the riding for the first time after June 1999, so a lot of the work that was done before this to come up with the name I'm not a party to because I wasn't their representative before that. Some of those questions would be best put to Barb Fisher, who was the representative, as opposed to Bill and I, who are now fortunate enough to represent Bruce since that time. I think the committee will have to decide today, with the information they're given, to get the best results.

Mr Brad Clark (Stoney Creek): I wanted to start off by thanking you for coming down. I know how difficult it is. I've been in those chairs before as a constituent and as an advocate. Sometimes this place can be a little bit overwhelming.

Mr Agostino: The good old days.

Mr Clark: The good old days, as Dominic says.

I do have a number of questions, if I may. In Kincardine, if you can help me out, please, in terms of the numbers—the people voted in Kincardine on the name change. How many people in Kincardine, percentage-wise, voted for “Kincardine”?

Mr Jarrell: I’ll give you a partial answer. It’s not the complete answer you’re after; our clerk is going to try to look it up. It’s 1,676 people out of the 5,405 voted, or 31.01%. I’m not sure how many voted for “Kincardine.” That was your specific question, I believe.

Mr Clark: Yes.

Ms Graham: In ward 1, the vote for “Kinbruce” was 93, the vote for “Kinbruton” was 20, the vote for “Kincardine” was 1,071, the vote for “Kincardine-Bruce” was 191, the vote for “Penetangore” was 62, and the vote for “Scotslanding” was 33.

Mr Clark: That was just the one ward or all of them?

Ms Graham: The total ballots cast for Kincardine were 1,676.

Mr Clark: That’s in Kincardine proper, total?

Mr Jarrell: Yes.

Mr Clark: OK. I have some questions with reference to the actual committee that set up—process, I guess, in terms of the name change. Were there terms of reference that were provided to the citizens who volunteered to sit on the committee originally to look at different names?

Mr Jarrell: Yes, a fairly simple one. One of the main tools—they were asked to come up with an attractive name and a name that would be useful in marketing. Those were the two, with no limitations. We felt that by having two members from each ward elected by that specific ward, we were not loading the deck. We felt we were being fair.

1100

Mr Clark: Was there at any time in the terms of reference any mention made of the fact that they should not consider current names for the municipalities?

Mr Jarrell: The first group that was appointed, unbeknownst to us, did develop that among themselves. The first list they brought in had been under that guideline that they themselves had subjected themselves to, and they complied with it with the exception that they did bring in the name Kincardine.

Mr Caldwell: I have the terms of reference here with the criteria. Also part of that, which Mr Jarrell has not mentioned to you, was that the name should reflect the common attributes and flavour of the three present communities.

Mr Clark: Thank you. So they had set for themselves the parameter that they should not consider current municipalities, but at some point “Kincardine” was added to their list. Can you explain why?

Mr Jarrell: No. Without being a member of that committee, I couldn’t explain why that happened, but when those names came back in to us and we requested them to take them back and rework them, we did ask

them specifically not to exclude any name because of its relationship to an existing municipality.

Mr Clark: Was the name Kincardine-Bruce-Tiverton excluded from consideration?

Mr Jarrell: The committee that was set up, representative of the three wards, did not bring it back in. We specifically asked them if they had considered it and they said yes, they had.

Mr Clark: I have a letter here from a Stephen Caldwell. I’m assuming the mayor has seen this. The second paragraph reads: “No advertisement came directly to landowners and residents of this municipality. Upon talking to the mayor, he admitted that the area in which I live—the former Bruce township, northeast corner—was not adequately covered by newspapers and media in which this vote was taken. Not all get the same newspapers; therefore we should have had something in our mailbox—leaflet etc.” Would you care to comment on that?

Mr Jarrell: Yes. It’s the area that Mr Caldwell referred to, the one up closer to Paisley. It is the farthest distance from Kincardine, if you were to take a diagonal line across. The comment is not particularly true where I acknowledged that it wasn’t served by newspapers. The newspapers do say they service that area, but that doesn’t mean that the residents there have to subscribe. I know that Mr Caldwell and at least one other member from up in that area said no, they don’t take any papers.

Mr Clark: Could you have done anything differently to ensure that all the electors in the area, in the region itself, would have been given personal notice of the vote?

Mr Jarrell: One vehicle that I used personally when I was campaigning for office was to use Canada Post and the flyers. The flyers aren’t precise and I know certain areas that did not receive them, but it would give a broader coverage.

Ms Graham: The name selection committee, in attempting to garner names to determine what the name of the municipality would be, actually did send out a mail-out questionnaire to every home in the municipality during this whole process, and there was a buzz about the name throughout the municipality.

The other thing I just would like to point out is that I do have a list, and I got this recently from our local newspapers, of stores selling papers within the whole municipality. I notice that the Cottage Grocery Store in Inverhuron, McMann’s Garage in Underwood and G & M Variety in Paisley, all hold newspapers there. These, I’m assuming, are stores that would be frequented by people perhaps in north Bruce, I would think.

Mr Clark: If the numbers are correct here, it was 1,607 for “Kincardine” in total? The total number of votes for “Kincardine” in the entire region.

Ms Graham: In ward 1, the number voting for “Kincardine” on October 4 was 1,071.

Mr Clark: Do you have a total for all the residents in the entire area who voted for “Kincardine”?

Mr Jarrell: In the total municipality, 1,607 voted for “Kincardine.”

Mr Clark: That's the number I had. Do you have any comment with respect to the fact that you have a petition here with 1,100 names opposed to the name "Kincardine" and the total number of votes for "Kincardine" was 1,600? It seems pretty close.

Mr Jarrell: A comment?

Mr Clark: Yes.

Mr Jarrell: I wish the same enthusiasm had been applied prior to October 4 as is being applied now.

Mr Clark: One final question for the residents over here: If this had been put to a ballot in a normal municipal election as an added question, would you have been satisfied with the outcome if "Kincardine" had been chosen?

Mr Caldwell: Yes.

Mr Clark: Thank you very much.

The Chair: Mr Gill, do you have questions?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): Mr Mayor, this might have been mentioned earlier, but could you please give me the name of ward 1 again?

Mr Jarrell: The name of the original municipality? Ward 1 was the town of Kincardine.

Mr Gill: And ward 2?

Mr Jarrell: Ward 2 was the township of Kincardine and ward 3 was the township of Bruce.

Mr Gill: As I understand it, the ward 1 and ward 2 eligible voters are 8,436, from your numbers.

Mr Jarrell: Yes.

Mr Gill: And in ward 3, which is Bruce-Tiverton, the eligible voters are 2,439. Am I correct?

Mr Jarrell: Yes.

Mr Gill: I'm going to make a comment, that as long as on the ballot item the name "Kincardine" itself appeared, it seems to me that the overwhelming majority lived in wards 1 and 2 in which Kincardine was the primary name. I don't know how much advertisement would have changed anything. I do hear the concerns from everybody that if you had done the mailing, door-to-door and using Canada Post, but as long as the question was there as Kincardine—

The Chair: Mr Gill, could I ask you at this point to keep to questions? We'll enter into debate and comments, but you might have other questions—

Mr Gill: I'm OK. My questions have been answered. Thank you.

The Chair: Thank you very much. If I could just point out to the committee members again, some of these answers, if you need to refer to them during the course of debate, are contained in the compendium of information that all committee members received prior to this meeting. I see you shaking your head.

Mr Gill: I did not receive it.

The Chair: In fact, all committee members received the package for today, which has the compendium. I just checked with the clerk on that.

Mr Young: Madam Chair, can I ask one quick question? To the delegation sitting at the end of the table here, I want to be very clear about your position today as we

enter our deliberations: Is it your position that the residents of ward 3 and the residents of the municipality in general did not have notice of the plebiscite or referendum or question? I want to know what you say about that.

Mr Caldwell: I'll make a comment to that. I was combining in the field. I didn't know a thing about it till 5 o'clock. I was 20 miles away from home; no way I could possibly get to it. I heard it on the radio. I don't think it was adequate notice, personally for myself or my son, to even know.

Mr Young: You don't subscribe to or read the local papers they've mentioned where it was advertised?

Mr Caldwell: We don't get a local paper. The local paper we get is published every other week in Paisley. It could have quite conceivably been put in there and we would have gotten notice.

Mr Young: How did you ultimately get notice of it?

Mr Caldwell: I heard it on the radio at 5 o'clock that day.

Mr Young: Did you vote?

Mr Caldwell: No, I couldn't. I didn't have time.

1110

Mr Young: The other members: Can I ask the same question?

Ms Zavitz: I didn't vote, and that's the first time I've never voted, at any time. I heard about it at the beginning, but I forgot about the date and completely forgot about the day.

Mr MacGillivray: I did not vote because we were in Europe at the time. We were in Europe in September and October and we were not at home to vote.

Mr Ribey: Yes, I voted. We happen to take the Kincardine paper and I saw it there, but we're a long way from Kincardine. People don't shop there; they don't mingle in Kincardine; they go the other way. They had no way of knowing, unless they were talking with some other people.

Mr Clark: The gentleman mentioned the fact that he was in Europe. Were proxies or advance ballots allowed?

Ms Graham: Yes.

Mr Clark: There were advance ballots also?

Ms Graham: There was an advance vote too. I could read you the numbers for the advance vote.

Mr Clark: No.

The Chair: Are there any further questions from committee members?

I thank the applicants and the interested parties who've attended and ask you perhaps to resume your seats in the audience.

We will at this point in time move to comments and debate on the bill by committee members. At an appropriate time, when it appears the committee is prepared or ready, we can move to an actual vote on sections of the bill.

The committee members will know they have the option, obviously, of carrying the bill as proposed, of amendments, of deferring a decision on the bill and referring back to the municipality for further action.

There is a range of options the committee has and that will, I think, be appropriate to be discussed at a point in time when we finish comments and debate.

I had interrupted Mr Gill when he was making some comments. I don't know if he would like to resume now.

Mr Gill: Continuing where I left off, I still feel that there is always a better way of informing people. Perhaps the residents might feel that they could have been informed more properly. At the same time, from the question, it seems to me—this is hypothetical—it may not have made a difference. As long as the Kincardine name was there and as long as 75% of the people come from that area, the outcome may have been the same. That is the kind of comment I wanted to make, as I said before.

Mr Clark: For me, I have serious concerns about this situation on a very personal level. I'm just now going through amalgamation in my own community, and all the members in the room know my concerns there.

The identity of a community itself is something that's very personal for most members in that community, especially when they've lived there for many generations. Over the years I demonstrated in many aspects, in terms of my concerns about direct democracy and the need for it from time to time, that when we venture down that path on any mechanism of direct democracy, it's an absolute imperative that we operate with complete due diligence to make sure everyone has an opportunity to speak to that matter. It does concern me to read a number of letters where people state that they did not have notice. If that is the case, the question comes to me, how many people really didn't know? How many people in those communities really did not know that this vote was happening and, as a result of that lack of knowledge, were disenfranchised of an opportunity to vote to that issue? That I'm having difficulty overcoming, I'll be very frank.

I'm not sure. I'm stilling mulling over in my mind what resolution we might have to this situation, but I have to tell you that it does concern me. It does concern me that you're talking a very low turnout in a vote; you're talking 1,607 people voting for the name of Kincardine and we have a petition for 1,100 names now opposing it.

There does seem to be a problem. I have some very serious reservations about it and I'd be interested to hear from my other colleagues.

Mr Agostino: I share the concerns of my colleague from Stoney Creek. There was a vote taken; I understand that. I guess I have concerns with the notification process that was used. If we're going to use the numbers to legitimize the process, I think we've got to ensure that the system is foolproof from the point of view of a notification process. The numbers may have been different; they may not have been different. However, the integrity of our democratic system—if we're going to use this, the rationale is that the numbers overwhelmingly point to one particular choice. Then I think we have to ensure that the system used to achieve that is within the

keeping of our democratic system. Generally we never would run a provincial, municipal or federal campaign without a proper notification process, and we use those results, obviously, to determine how we govern ourselves locally, provincially or federally. So I have a problem with that.

I have a difficulty in the sense that the choice—maybe somebody can clarify if I'm wrong, but I understand that the name currently used, Kincardine-Bruce-Tiverton, was not on the ballot. Is that correct? That was not one of the options given to people? That may have made a difference, in the sense that that may have been a good compromise position for all parties involved and may have been the majority number that would have come out of that. Because the numbers are so slanted in terms of population base, almost 75% or 80% in one particular area, it also would be a foregone conclusion from the point of view of protecting the minority in those townships that are clearly in the minority situation. I think we have somewhat of a responsibility to do that.

Chair, I would have a difficult time. I cannot, in good conscience, support the resolution that is here.

I have a suggestion—and it is a suggestion; I'm not sure how we could work around that—that we look at keeping the current name as it is until the next municipal election and then asking the township to consider a referendum question on the municipal ballot, putting “Kincardine” as one option and “Kincardine-Bruce-Tiverton” as another option on that same ballot in a properly run municipal election. There would be a ballot question on that, there would be proper notification, and people would then have the full choice, which appears to be “Kincardine” or “Kincardine-Bruce-Tiverton.”

That, in my view, would make it much more democratic. That, in my view, could reflect much more, because it does give people the option of keeping the name that appears to combine the areas together. At that point, I think we would have to respect the democratic outcome at that decision. But it would at least level the playing field by an opportunity giving people the full ranges.

I certainly can't support what's in front of us today with this bill. I would like to see it go back with a properly processed way of voting and giving the people the options they have, of keeping the current name or moving to Kincardine as the name.

Mrs Claudette Boyer (Ottawa-Vanier): For the same reason as Mr Clark and Mr Agostino have suggested, I have reservations on voting today on this bill.

First of all, I was shocked when I read the letters from the opposition saying that the committee had added this name, which was not the first name. I have quite a lot of reservations about that. Along the way, we say that the township, the mayor there and council wanted to have a democratic process instead of giving a name and saying, “This is the name,” but the way it's going, I find that there's a lot of contradiction. I still wonder if it was very democratic.

As far as communication was concerned, when there's a will there's a way. They should have ensured that everyone concerned had a written notice of the election.

I will not repeat what my two colleagues said. At this stage I don't think that I could vote in favour of this bill.

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Mr Young: Madam Chair, before I speak, can I get clarification from you and perhaps legislative counsel and the clerk as to what we are being asked today? It's my understanding, as you had indicated earlier, I believe, Madam Chair, that we are being asked to either essentially approve this legislation and send it on to the next stage or reject it. Are those our options, or are there other options beyond that?

The Chair: I'll ask the clerk to elaborate or correct me if there's more to add. The question before us today—there's been a bill properly put before the Legislature, which has been found to be in order, which is for our consideration. The question that will be put to the committee is, shall the bill carry?

The committee has options. If the committee determines that the bill shall not carry at this point in time, the bill can be defeated. Or the committee has an option to defer consideration of the bill today to request further action to be taken. Perhaps the clerk could just add to that.

Clerk of the Committee (Ms Anne Stokes): Those would be the options available, and it's fully within the power of the committee to do what you will with the bill.

Mr Young: I appreciate that. I don't want to complicate what is already in many respects a particularly complicated situation. It is a difficult decision, and I understand both sides.

I understand the affinity and the connection that individuals, groups, parts of our province or our country have with names and it's not to be disrespected, but I do wish to point out that names continue well beyond legal amalgamations and alterations that occur from places like Queen's Park.

One example of it is—and it was very interesting reading the petition, because for me it meant one of two things as I went through it and asked some questions earlier. To me it meant either that there were a whole lot of signatures on this petition from people who had no connection with the subject municipality—and I'm told that's not likely the case, although we don't know for sure—so it was either that these are people from Port Elgin and Paisley and so on and so forth who have no connection, or alternatively, they are people who are in the subject municipality, which may well be the case, who continue to utilize names of smaller towns, townships and jurisdictions even though they don't necessarily find their respective names reflected in any of the proposals we've heard. We've heard no proposals, at least I haven't taken down any notes, that would suggest that names like Paisley would be included in there, and there is no Paisley adjacent or up or down. These have been amalgamated into other areas, yet they continue to use their names.

I also heard with interest—and it was very interesting, because I quite like hearing about the historical underpinning of things—about how the name Bruce in particular has continued to be used for generations and generations and how successful some organizations and corporations that utilize that name have been over the years.

There is no evidence and no information in front of us to suggest that continued use of the names Bruce or Tiverton would not be maintained by these organizations—Bruce nuclear plant and so on and so forth, the telephone exchange that was mentioned. I have some considerable level of optimism that these names, that are very important to some of the deponents who have come here today, will continue to be used, just as names in neighbouring towns that have been amalgamated into other municipalities continue to be used. There's no suggestion in front of us that there's going to be some revamping of these names or postal stations or anything along those lines.

It would be difficult, in my respectful opinion, for us to vote against this legislation, for two reasons. The first is that from what I've heard I believe there has been a bona fide attempt by the town's duly elected municipal officials to have a fair process. I'm not going to sit here and say they could not have done better. As a Monday morning quarterback I probably could dissect the process—I think my friends have done so; I have perhaps as well—and consider ways we might have been able to improve upon this process. We should aim for perfection, but simply because the process wasn't perfect doesn't mean the results of the process should be discarded.

It seems to me there was a bona fide attempt to go out and obtain the opinion of the residents through a referendum, for want of a better term. There was a reasonable attempt made to go out and advertise and inform individuals of this referendum, not perfectly, but the reality is that they did try. I think that information was there to be had and there was an opportunity for people to exercise their franchise and express their opinion in that manner.

In closing, let me say this. I am not overly swayed, although I certainly am impressed, by the number of names on the petition, for this reason. First of all, I'm not sure if all these people reside in the subject municipality, but I'm prepared to assume that most of them do. Second, if you compare the numbers, 1,600 and change who voted in favour of the name we're being asked to approve today as compared to about 1,100 on the petition, it seems to me that what we have here is a reiteration by the 1,100. Most of the 1,100 presumably went to the polls and voted against the name that's in front of us today: the municipality of Kincardine. In fact I guess there was closer to about 1,400 or more who actually cast a ballot contrary to the proposed name. But it seems to me that simply the fact that this has been reiterated by way of a petition shouldn't alter our decision-making process, and it's time to get it on with it, it would seem to me.

This particular municipality for numerous reasons has gone through a rather tumultuous period as part of this amalgamation. It's time to get on with it. I do not personally believe it's going to have any significant or adverse effect upon the lifestyle of the community if we approve of the legislation that's in front of us, and I, for one, will support the legislation.

Mr Coburn: I'd like to point out a few observations as I was listening to the comments made. Correct me if I'm wrong, anybody, but the request was made of Mr Murdoch to bring a private bill forward by the lawyer representing the council. That's correct? OK.

There are a couple of things here that are important. The council determined a process by which they could resolve this issue and they exceeded the requirements under the Municipal Act. It's a process that's very well known to us here in the democratic system to try and resolve situations, and they went beyond that.

The thing that puzzles me a little bit is that we went through a restructuring in this community. Certainly everybody, who would have been sitting on the edge of their chairs, I would think, as they were going through this restructuring, would know there would be a name change, given the background I've seen. They know there are going to be some other changes. To come up and say after the fact, "I wasn't aware something was going to happen," I think is that after the horse is out, we're going to try and close the barn door. This was something that happened in the community and had been ongoing for some time. I guess the onus has to go back on ratepayers to a certain degree, that you have a responsibility in your community to be aware of what is going on.

The council I think did its utmost in trying to inform residents that a decision was going to be taking place, in addition to the fact that, because of the legalities precluding the final date of restructuring, that didn't permit them to incorporate the name change at that time.

The other issue here is that this was not a binding election. The municipality had the ability to stop the process or to move ahead and request a private member's bill. That was the only avenue to make change. So I think the decision rested with the community. We have to have some regard for those who took the effort to come out and vote on the day designated.

When you get into name changes and restructuring, it tugs at the heartstrings and it pulls you in all different directions, but as my colleague Mr Young said, when the rubber hits the road, you've got to make a decision. All the processes were followed, and therefore I support the process and this bill.

The Chair: Any further discussion or debate? Seeing none, are the committee members ready to vote on this matter? OK.

Just for the information of those attending today, only members of the committee are eligible to vote. There are a couple of members of the Legislature in attendance here today who are not members of the committee, so

they won't be voting. Also, the Chair, myself, I don't vote unless it's a tied vote, so don't let that happen, folks.

We have before us Bill Pr15, An Act to change the name of The Corporation of the Township of Kincardine-Bruce-Tiverton to The Corporation of the Municipality of Kincardine. We can move directly to voting. There have been no amendments put at this point in time—

Mr Clark: Can I ask for a five-minute recess, Madam Chair?

The Chair: We're not into the vote yet. You almost missed your opportunity. It is 25 minutes to 12. A five-minute recess. We will reconvene at 20 to.

The committee recessed from 1132 to 1139.

The Chair: I call the meeting back to order. May I ask committee members again, at this point are you ready to vote on this matter?

Mr Young: Absolutely, yes.

The Chair: There have been no amendments put or any indication that amendments are being put, so I'll begin with sections 1 through 4 of the bill, which is the entire bill, just for explanation to folks out there.

Shall sections 1 through 4 carry? Please put your hands up if you agree. Would all those in favour please indicate. Those opposed, please indicate. Sections 1 through 4 carry.

Shall the preamble carry? All those in favour, please indicate. Those opposed? Carried.

Shall the title carry? Those in favour? Those opposed? Carried.

Shall the bill carry? Those in favour? Those opposed? Carried.

Shall I report the bill to the House? Those in favour? Opposed? Carried.

Thank you very much. Bill Pr15 has passed through committee. It will be reported out this afternoon to the House. It will remain with the House. The House will deal with it in its own time and fashion.

Just for interested parties to know, this is close to coming to the end of this legislative sitting. I don't know whether that will be today or tomorrow and/or whether there will be any resumption of the House after Christmas. There has been no adjournment motion yet, so that's up in the air.

I can't actually give you notice at this point of when the matter will be dealt with, but you certainly can rest assured that we will report it back to the House and it will rest in the hands of the Legislative Assembly as of this afternoon.

Mr Magwood: Is there a process of notifying us of proclamation?

Clerk of the Committee: I will advise you when royal assent has been received.

The Chair: I appreciate all of your attendance here today and I thank you for taking the time.

REVIEW OF REGULATIONS REPORT

The Chair (Ms Lankin): Committee members, we have another item to deal with. The next item on the

agenda is resumption of consideration of regulations report. If I may, the clerk has provided me with a brief summary of the role of the committee with respect to these matters, and particularly now that we're down to having asked legislative counsel to review these matters with ministries, we're down to two outstanding issues that are being brought back to us. It may be helpful if I share with you this summary. This is a new process to me and I found this helpful:

"The role of the committee with respect to regulations is stated in the standing orders. The committee is not to review the merits of the policy or objectives to be effected by the regulations or enabling statutes of any regulation. The committee is to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power within a framework of nine guidelines.

"The lawyers in the legislative research branch are tasked with the responsibility of doing the actual review and analysis of each and every regulation enacted and to produce a draft report for the committee's review.

"You have a copy of the draft report in front of you and are now being asked to consider it and make a report to the House.

"You will note that the legislative research officer has undertaken to contact the ministry in the case of any question regarding a regulation and that ministry has the opportunity to reply in each case. After examining the responses, the report comments upon 13 regulations and indicates that there are two outstanding issues that have not been resolved."

"This is your opportunity" as a committee now "to ask any questions of the research officer and to discuss the issues raised in the report. The report is in draft form and may be changed" by the committee in any way that we instruct. "What you are then going to be asked to do is to make a motion to adopt the report and report it to the House. You may present the report for the information of the House or ask the House to adopt it.

"Pursuant to standing order 32(d), the committee may also request that the government table a comprehensive response to the committee's report within 120 calendar days of the presentation of the report to the House."

If I just may add to that for committee information, in most cases, if we've come to a conclusion ourselves among the committee, the report will just be presented to the House. If we vote to present and move adoption, it's because we believe there's some reason there should be debate in the Legislature.

Pursuant to standing order 32, a request to the government for comprehensive response is most likely to arise in the circumstance where the information provided to us by legislative counsel leads us to believe that the ministry has not satisfied the concerns that this committee should be concerned with with respect to the regulation. The committee may feel it is not prepared to simply reject the regulation or report that back to the House for debate, and we want to provide the ministry and minister with an opportunity to give a full response.

A range of options are available to the members of the committee.

I think what would be most helpful is if we ask legislative counsel to briefly outline the regulations in question. We'll do them one by one.

Mr Clark: Do we have the report?

The Chair: You have the report in front of you. This is the draft report. It covers the comments on all the regulations.

Today is the resumption of the discussion with respect to this. The full information was presented to the committee at the last meeting. There are two outstanding issues, although, if the committee would like a presentation on the full report, I'm going to suggest as a matter of expediency that we simply ask for an update on the information with respect to the two outstanding issues, because I think that's the bulk of what we have to deal with here today.

If I could ask committee members, I think you will find the two outstanding issues on pages 7 and 9 of your committee report. We will deal with them individually as matters. Could I ask legislative counsel to please provide us some information on the first matter, the regulation under the Ministry of the Attorney General?

Mr Andrew McNaught: First of all, I should point out that I'm not from legislative counsel. I'm from the Research and Information Services branch of the library. It's a common mistake. However, I'd be happy to have a salary review.

Anyway, as the Chair has mentioned, there are the two outstanding sections, and they deal with the Ministry of the Attorney General and the Ministry of Finance. I'll go over the two areas again.

The section on the Attorney General begins on page 6. That section deals with two regulations made under the Administration of Justice Act. These regulations set the fees payable by those who file a claim in Small Claims Court. For this purpose, the regulations distinguish between frequent claimants and infrequent claimants.

A frequent claimant is defined as someone who files a claim in a Small Claims Court office and has already filed at least 10 claims with the court in that calendar year. An infrequent claimant is simply someone who has filed fewer than 10 claims in that year. You will see from the table at the bottom of page 6 that the fees prescribed by the regulations are significantly higher for frequent claimants. We raised the concern with the ministry that the higher fees appear to penalize frequent claimants.

For example, we've indicated that for filing a claim, the fee is \$50 for an infrequent claimant, whereas it's \$120 for a frequent claimant, which is 140% higher. For fixing a trial date, an infrequent claimant pays \$100 and a frequent claimant pays \$130, which is a 30% higher fee. The fee for entering a default judgment is \$35 for an infrequent claimant and \$50 for a frequent claimant, which is 43% higher.

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We raised the concern with the ministry that the higher fees appear to penalize frequent claimants and that

this would constitute a violation of committee guideline number 6, which prohibits the imposition of a penalty by regulation. The ministry responded that infrequent users are usually individuals or small businesses, whereas frequent users are generally larger institutions. So on the basis that it would be fairer to ask large institutions to assume a greater share of the funding of the Small Claims Court program, the ministry decided to set higher fees for frequent users.

However, our view was that the committee's guidelines are concerned with the effect of a regulation rather than with the underlying policy, and since the effect of the higher fees for frequent users is to impose a penalty on such users of the Small Claims Court, the regulation violates the committee's guideline against the imposition of a penalty by regulation.

Do you want to deal with that issue now?

The Chair: Yes, I think we will.

Mr Young: As a point of order, I guess for want of a better way to interject, can I get a copy of what you read to us earlier about what our responsibilities are here? It's kind of clear as mud to me.

The Chair: We're just going to get the photocopies—

Mr Young: Because it will reflect what we ask and what we don't ask and ultimately how we vote.

The Chair: While we're waiting for that, let's take a run through this again and also ask the clerk to elaborate. In this example, whether or not you think it is a great policy in this case, as the ministry is suggesting, to have large corporations pay the lion's share of the cost of administration of this process of Small Claims Court and cross-subsidize, therefore, individuals and small business—whether or not you agree with that is not a matter for consideration by the members of this committee.

The question you are being asked to decide on is whether or not, as has been suggested by legislative library and research—have I got that right yet? The lawyer from the branch who advises our committee suggested that it violates the guideline in this case because it imposes a penalty through regulation, which the guidelines suggest should be done through legislative provisions, not through regulations under the legislation. Do we wish to do something about that? Do we agree that it is a violation of the guideline and do we wish to do something about that?

The options we have available—rather than me trying to run through them again, I'm going to ask the clerk just to set it out clearly in terms of what the committee can do in this circumstance.

Clerk of the Committee: Just to recap, there are nine guidelines—it's in the standing orders—in terms of the mandate of the committee. As the Chair has said, it's not to review the policy or the merits of a regulation. The nine guidelines are things like: the regulations should be in strict accord with the statute conferring of power; regulations should be expressed through precise and unambiguous language; they should not impose a fine, imprisonment or other penalty; regulations should not impose anything in the way of a tax. Those are the only

guidelines this committee is empowered to review regulations by.

The people in the research branch are tasked with doing the actual review and analysis. Any regulation that is regulated is reviewed by them, and if there are any questions in terms of these guidelines, they contact the ministry and ask for a response. A report is then generated from those responses, and that's what we have now in front of us.

The Chair: And the options of the committee?

Clerk of the Committee: If the committee is satisfied with the responses from the ministries, then the committee would adopt the report and it's presented to the House. We could ask the House to adopt the report, which means it would then go on the order paper and it could be called for a debate at some future date. The committee could also actually place recommendations in the report, recommendations to the ministry to do whatever the committee feels the ministry should do. In that case, we would ask the House to adopt the report.

Mr Young: OK. That's great. Thank you.

The Chair: The committee also has the option of asking the ministry to provide a comprehensive response, which, if I could ask the clerk, might lead to what?

Clerk of the Committee: The government House leader would respond on behalf of the government, of the ministries, for a comprehensive response. If the response has already been received from the ministry and that is in the report, we could ask for further response and they would presumably elaborate on the response that was given previously.

The Chair: If I just may ask the clerk, in that situation, the committee may defer actually dealing with the report or the recommendation at this point in time? It might ask for that response and give consideration to this when a response is received?

Clerk of the Committee: The response would only be requested when the report is tabled in the House.

Mr Young: We would adopt and then ask for a response as part of its tabling?

Clerk of the Committee: We could, yes.

Mr Young: Then this committee wouldn't see the report again?

Clerk of the Committee: The report then would be tabled. The response would come back and would be circulated to the committee.

Mr Young: Would it be possible to ask for that response to be returned to this committee?

Clerk of the Committee: Yes.

Mr Young: Is there some concern about doing that, timelines or something?

Clerk of the Committee: The standing orders state that the response should be received within 120 days.

Mr Young: Of our request to them?

Clerk of the Committee: Yes. Of being tabled, I should say.

Mr Young: Madam Chair, I'm sorry to dominate this.

The Chair: No, this is fine. It's helpful to all of us.

Mr Young: If it was our decision today to ask for a response from the respective ministries to be returned to this committee, it's implicit that it has to be done within 120 days. Then we could have a discussion with the respective ministries here as well, at that return date? Am I on track or have I lost it somewhere?

Clerk of the Committee: The report would have been tabled at that point.

Mr Young: The report?

Clerk of the Committee: The report is tabled in the House, yes. But the committee could still leave those as outstanding issues and then we could present—with a response, then there could be another report that would be presented.

The Chair: If I could at this point—I hope it's helpful in clarification—our committee, in the end, is not being asked to pass or to approve the actual regulations. We're preparing a report based on the review. It's the report that we're looking to approve. So the report as it is drafted on these two issues, the one that we were talking about in particular, contains the concerns set out and contains our opinion that it is in violation of the guidelines.

That matter can be presented to the House. It can be presented to the House for adoption, which will allow some debate with respect to that. It can be presented to the House with recommendations to the ministry. It can be presented to the House with a request for a comprehensive response. And from what you've said, Mr Young, one other option at this point is that it could be presented with a request for a comprehensive response but without these matters included, and we could deal with them later. This is the range of options.

Mr Young: Thank you. That's very helpful.

The Chair: I think the one important thing for us to remember is that within the standing orders there are the nine guidelines, only the nine guidelines, and it is rare that we end up in a situation where one of them is being presented to us as being clearly in violation of those guidelines. It's a technical process that we're undergoing here and one that obviously we all take seriously in terms of this review.

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Mr Clark: If it's tabled to the House, the response would be coming to the House then, correct, or back to the committee?

Clerk of the Committee: If we're requesting the response, it would come to the committee.

Mr Clark: It would come to the committee, but the report's already been tabled in the House.

Clerk of the Committee: The report is tabled with a request that a comprehensive response be made to the committee.

Mr Gill: To the research officer, when did this differential start? How long does it go back? Has it been long-lasting or did it just happen?

Mr McNaught: This looks like it was 1997.

Mr Gill: And prior to that everybody paid the same fee?

Mr Clark: It doesn't say that.

Mr McNaught: I don't know what existed before.

Mr Gill: OK. I know that's not what we're discussing.

Mr McNaught: I can certainly find that out.

The Chair: I'm sorry, I can't follow the side discussions. Can we keep things on the record here?

Mr Gill: I think we were all discussing things. We took the opportunity while you were discussing to discuss something among ourselves.

The Chair: I'm sorry. I thought you were—

Mr Gill: No. The question was basically, how long ago did this differential start? Not that we're discussing that, but I was just curious about how long ago that differential started.

The Chair: If I might, it's an interesting question but it is really irrelevant to the decision we have to make. If you want that answer, we can ask the legislative branch to get it, but I don't want us to confuse the discussion here.

Mr Gill: Sure.

The Chair: Again, I'm just asking questions just to understand clearly the role of the committee. If we are of the opinion that a regulation is in violation of one of the guidelines in the standing orders that governs the review conducted by our committee, it is our job to report it, or report it with a request for action, or report it with a request for information and response.

There isn't an opportunity for us to fix the problem that we may see here at this committee. That rests for others. By and large, it could be done voluntarily by a ministry if a recommendation has been made by the committee; they may or may not take it into consideration and act on it. In the response, if you've asked the ministry to respond and it has to come through government ministers at that point in time and the House leader, the government may decide to take some action—the political government, I'm saying—in response to seeing the concern of the committee.

An individual member who might read the committee reports might decide through their caucus process to pursue it in the Legislature in all the variety of ways that are there, like motions or whatever.

But it's not up to this committee to actually fix a problem if we see it. It's up to us to take appropriate action with respect to reporting and/or reporting with more information.

Mr Clark: I'm getting the distinct impression that really there are two options for us here. We can take the entire report and table it to the House, asking for additional information, or report on the two outstanding items, or table the report without those two items and ask for information. What would the difference be to that?

Clerk of the Committee: The report is in draft form right now and any changes can be made to it. The report would go forward to the table. Say we've made no changes to it; the report would go forward as it is. The options are that the report would be tabled and you could ask for a comprehensive response from the ministry and they would respond to the report as a whole. There are other comments that are made, but basically these are the

two outstanding ones, that there has been some disagreement or difference of interpretation between the research branch and the ministry. The letter would come through the government House leader to the committee. So it would be that the whole report is tabled and the whole report is commented on or responded to.

Mr Clark: Then we could as a committee take these two items out of the draft report, table the report that we don't have difficulties with and ask for further comments from the ministries in question regarding the two outstanding items?

Clerk of the Committee: There has been correspondence already between the research branch and the ministries, and the result is that—

Mr Clark: We're at loggerheads.

Clerk of the Committee: We're at loggerheads, basically. The difference is that you're bringing it to the attention of the House and it's up to the House to decide what to do.

Mr Clark: In essence, we're at an impasse on these two items as a committee and they should go to the House to be dealt with.

The Chair: Again, there is a range of options there. You can simply present it to the House. You can present it and ask for adoption, which means that you are specifically putting it in the realm of suggesting that it go into debate in the House. That is a large step for the committee to make, just to be fair in understanding the process. The other option that's available to the committee is to amend the report in such a way that we as a committee make a request of the ministry to make amendments to the regulation to bring it into compliance with the guideline that we think they're violating. They don't have to do that, but then it's there in the record and we present that to the House. Again, our job would be done and it remains with members of the Legislative Assembly to take any further action they deem fit or not at that point in time. Am I correct?

Mr McNaught: I just wanted to point out that I think this goes to something Mr Young was raising earlier, that the committee could, if it wanted, call ministry officials to come before the committee to explain their position. I think that could be done at any point; it doesn't have to be done after the report is tabled.

The Chair: I'm going to try and move us along here. Let me get a sense from committee members. On this particular regulation, do you share the concern that has been put forward in the draft report at this point in time? Can I just get nods whether there's general agreement?

Mr Young: I don't know if it lends itself to a nod, Madam Chair. I do, on a preliminary basis, have some concerns. I understand the concerns. I also have some understanding of the response that's contained in the paragraph from the ministry, and I would like, if possible, to have a representative from the ministry here to hopefully better explain and answer our questions about whether or not this isn't, in their view, a penalty. Obviously, they'll say otherwise, in view of their earlier comments.

I don't know if it's appropriate to move or not, but I would like to send the report on to the next stage, with the exception of the two controversial aspects of it, which I would like to have returned to this committee within the 120-day period, together with representations from the respective ministries. Is that doable?

The Chair: That would be entirely in order and doable.

Mr Young: That's just my opinion. I'll put that on the floor if that helps.

The Chair: The intent of that motion would be to forward this report. We would, by your motion, be amending the report to delete these two regulations but within our report include a request to the ministry for a comprehensive response on each of these regulations and a request to the ministry to send representatives to our committee, after we've received the comprehensive response, to answer questions we may have.

Mr Young: Quite so.

The Chair: If I may—and again, I'm attempting to help here—

Mr Young: You are.

The Chair: For the record, it would be helpful if we just had the item in dispute, the second regulation, put on the record by legislative research.

Mr McNaught: That section begins at the bottom of page 7 of the draft report. This section deals with two regulations again. These are made under the Fuel Tax Act and the Gasoline Tax Act. They provide for the implementation of the international fuel tax agreement. These regulations were filed on January 24, 1997, but were deemed to come into force on January 1, 1997, so in other words, to have retroactive effect.

Committee guideline 4 provides that regulations should not have retroactive effect unless clearly authorized by statute. In some provisions of the Gasoline Tax Act and the Fuel Tax Act there is authority to make regulations that have retroactive effect. However, we were unable to find this authority in the particular sections under which the two regulations in question were made.

The ministry's explanation appears to be that because there is authority in other sections of these statutes to make retroactive regulations, this should be interpreted as sufficient authority for any regulation made under these two acts to be retroactive.

Again, we set out the legal principles applicable to analyzing this kind of legislation. You will see that at the bottom of page 8 and on to page 9. But based on these principles, it's our view that in order for a regulation to have retroactive effect, there must be specific authority in the section under which that regulation was made. As we could not find that authority, we identified them as potential violations of the committee's guideline on retroactivity.

The Chair: We have a motion before us by Mr Young. That motion would see the draft report in front of us amended by deleting the recommendation on the two outstanding issues in dispute and substituting a request

on those two items for a comprehensive response from the respective ministries and that, upon receipt of those responses, the ministries be invited to attend at this committee to answer questions from committee members. The matters then could be dealt with and a report following that to the legislative counsel. Correct, Mr Young?

Mr Young: Yes.

The Chair: Is there any debate or discussion of that motion? None? May I ask all those in favour? That's unanimous.

Is there any other matter to be brought to the committee?

Thank you. We're adjourned.

The committee adjourned at 1212.

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Official Report of Debates (Hansard)

Monday 6 March 2000

Journal des débats (Hansard)

Lundi 6 mars 2000

**Standing committee on
regulations and private bills**

Subcommittee report

Franchise Disclosure Act, 1999

**Comité permanent des
règlements et des projets
de loi privés**

Rapport du sous-comité

Loi de 1999 sur la divulgation
relative aux franchises



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Monday 6 March 2000

Lundi 6 mars 2000

The committee met at 0856 in room 151.

Clerk of the Committee (Ms Anne Stokes): Honourable members, it is my duty to call upon you to elect an Acting Chair. Are there any nominations?

Mr John O'Toole (Durham): I would submit Mr Smitherman to sit in as Chair.

Clerk of the Committee: Mr Smitherman is nominated. Are there any other nominations? There being no further nominations, I declare Mr Smitherman Acting Chair.

SUBCOMMITTEE REPORT

The Acting Chair (Mr George Smitherman): Good morning. It's my pleasure to welcome you to this important consideration of Bill 33. I'd like to start by asking for a report of the subcommittee.

Mrs Claudette Boyer (Ottawa-Vanier): I would like to move the report of the subcommittee.

Mr Tony Martin (Sault Ste Marie): I'd like to move an amendment to the report to say that the ministerial briefing be shortened by 20 minutes and that Mr Ned Levitt appear before the committee following Mr Sotos before lunch, and that the committee would pick up the reasonable expenses for Gillian Hadfield, who will appear before us in Ottawa.

The Acting Chair: Any comment on the amendment moved by the member for Sault Ste Marie? All those in favour of the amendment? Any comment on the subcommittee report?

All those in favour of the subcommittee report, as amended? Is that carried? Carried.

FRANCHISE DISCLOSURE ACT, 1999

LOI DE 1999 SUR LA DIVULGATION
RELATIVE AUX FRANCHISES

Consideration of Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors / Projet de loi 33, Loi obligeant les parties aux contrats de franchise à agir équitablement, garantissant le droit d'association aux franchisés et imposant des obligations en matière de divulgation aux franchiseurs.

MINISTRY OF CONSUMER AND
COMMERCIAL RELATIONS

The Acting Chair: We're going to proceed with the ministerial briefing, and I'll pass the floor to Mr O'Toole.

Mr O'Toole: Thank you very much, Mr Chair. It's a pleasure to be here. I'd like to invite the ministry staff to attend at the table and also to introduce themselves for the record, please.

Mr Joseph Hoffman: Good morning, Mr Chair, committee members. Joseph Hoffman; I'm the director of policy and agency relations at the Ministry of Consumer and Commercial Relations.

Mr O'Toole: With that, on behalf of the minister, it's my privilege to make opening remarks, and then I'll turn it over to Mr Hoffman, if he has any technical comments or input.

Before I begin, I know members of the committee who are not currently in attendance are en route, and we certainly will be looking forward to their attendance.

It's an important opportunity to be here on behalf of Minister Runciman to start the hearings on the Franchise Disclosure Act. Although regular data are not collected by any government in this area, industry estimates suggest franchises in Ontario account for an estimated \$45 billion to \$50 billion in annual sales. That's 40 cents out of every retail dollar spent in the province.

Franchising is a powerful engine for economic growth and the creation of jobs. Moreover, many men and women in this province see the purchase of a franchise business as a way to reach their dreams of a better tomorrow. It is important that individuals and companies doing business continue to see Ontario as a good place to do business. They need to see Ontario as the place that promotes, and indeed encourages and rewards, entrepreneurship.

The Franchise Disclosure Act fulfills the government's throne speech commitment to introduce franchise disclosure legislation to foster an even stronger and more competitive marketplace. The government believes this bill is an important facet of a fair, safe and informed marketplace that supports a competitive economy in the province of Ontario. This is the first governing party in Ontario to follow through on its commitment to introduce franchise legislation. Both opposition parties had the opportunity to do so and chose to treat franchise problems as a lower priority.

This bill reflects the government's desire to find the right balance between distinct needs. There is a need for marketplace fairness. Potential investors in franchises need more information and transparency to make wise business decisions. On the other hand, there is an equally compelling need to avoid unnecessary or cumbersome regulations and respect the rights of private parties to freely conduct business and contract with one another.

To find this balance, Minister Runciman and the consumer and commercial relations staff conducted extensive consultations with business groups and individuals. These consultations included the Franchise Sector Working Team, a group of franchisees, franchisors and franchise legal experts who have literally committed years of effort to improving franchising in this province. While each member had a different idea of what a perfect franchise bill should contain, the entire team expressed support for the balance struck in this bill.

Extensive consultations were held with business associations and the franchise community. A consultation document was developed and sent to more than 300 organizations. The ministry asked for comments, and more than 95% of those responding said they support this approach.

We know that some people would like the bill to be different. Some would like the government to legislate business relationships, constraining the ability of private parties to freely contract things such as termination clauses. Some would argue for no legislation at all, allowing the market alone to deal with the issues, as it does in all but one other province in Canada.

The government chose a balanced approach between these views. This bill will achieve its goal. The government believes this legislation will encourage a fair, open and competitive marketplace. It will encourage more investment opportunities for both franchisees and franchisors. It will set standards for the disclosure of information by franchisors. It will require fair dealing between the parties to a franchise agreement. And it will ensure that franchisees have a right to associate, reflecting a fundamental principle that goes beyond the franchising industry itself.

The Mike Harris government, supported by many people in the franchise industry, believes this legislation will reduce the kind of problems that have arisen in the past. This proposed legislation is consistent with the approach taken by Alberta, the only other jurisdiction in Canada with franchise legislation. It also reflects the best practices in the marketplace today. It will raise some franchises to this standard and compel those unwilling to act fairly to leave the marketplace. Moreover, this bill will bring us closer to harmonizing legislation across the country.

I now want to hand the microphone to Mr Hoffman, the director of MCCR's policy and agency relations branch, who will take us through the bill. Thank you.

Mr Hoffman: Thank you, Mr O'Toole. I thought I would be of most assistance to the committee this morning if I explained what the objectives behind the bill

were and tried to accomplish three things. The first would be the highlights of the legislation itself, and the second would be to illustrate or highlight those issues which will be dealt with under regulations under the act. This is an extremely important piece of legislation. Many of the substantive disclosure requirements, for example, or things that will be set out in the regulations, are not in the legislation, and it's important that all members have the benefit of an understanding of what types of issues will be in the regulations and what the ministry has been on public record in terms of the various regulatory proposals.

The last thing I thought I could do is to respond to any questions that committee members may have from the perspective of a government expert who has worked in this area now under three different governments. If that's acceptable, then I will proceed.

First I would like to emphasize that many of the comments I'll make in terms of describing what the legislation does and does not do should be looked at in contrast to what exists today, which is essentially nothing. That is an important point, that almost every aspect of the bill needs to be compared to the current environment in order to put it in its proper context.

At the highest level, what the legislation in front of this committee will do is define franchise arrangements that will be covered by the disclosure requirements and those that may not be covered. I'll come back to that point, as I will to these other points, in more detail.

It will set out very explicitly the disclosure requirements, as well as the consequences for the failure to disclose.

It will create a statutory obligation to disclose all material facts relevant to a franchise offer, not simply those material facts that are prescribed in the regulations. There is a definition of "material facts." It is very broad and provides a very high standard of disclosure.

The bill will also create a statutory duty of fair dealing on each party to a franchise agreement. This is one aspect of the legislation that will apply, in effect, retroactively. It will apply to all franchise agreements currently in existence today.

It will also create statutory rights of franchisees to associate. This is another aspect of the legislation which can be described as retroactive in the sense that where there are existing franchise agreements that create constraints or prohibitions on the right to associate, the legislation, when passed, will nullify and make void such contractual obligations.

I would like to come back to each of these points, in effect, in succession.

First, what does this legislation apply to? There really are two areas of franchise arrangements that are set out in the legislation. The first is a traditional franchise, and these are the common business format or product distribution arrangements. In order to be affected by the legislation each of the following three aspects would have to apply:

There would need to be the use of a trademark involved, where the franchisor provides a right to distribute goods or services that are substantially associated with the franchisor's trademark or their trade name, advertising or commercial symbols.

In addition to that, there would need to be significant control or assistance where the franchisor exercises significant control over or offers significant assistance to the franchisee in terms of the method of operation of the business. Control or assistance could include, but not be limited to, things like building design, furnishings, locations, training, marketing techniques and so on, so it's really a substantive element of control.

Lastly, the other aspect that would need to apply is payment, where the franchisee is required to make payment to the franchisor or a commitment to make payment as a condition of obtaining the franchise or commencing operations.

That is the first category of franchise arrangements that will be captured by the proposed legislation. I think I can say that in the universe of franchise arrangements, that would occupy the lion's share.

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The second category of franchise arrangements that would be captured by this are what are known as business opportunities types of arrangements. Again there are three criteria and each of them would apply; the first is representational or distribution rights. This is different from the first category in that no trademark may be involved. The franchisor may simply provide the right to sell a good or service that's supplied by the franchisor or a supplier which the franchisor requires the franchisee to use. The second area would again be location assistance as a more narrowly defined aspect of control, where the franchisor will secure a retail outlet or accounts for the goods or services to be sold or secure locations or sites. For example, vending machines could come under this category, depending on the magnitude of the business, or display racks, or providing the franchisee with the services of someone to do those things. The third category is the requirement for payment, which is essentially identical to the one I described before.

In any franchise arrangement, other than those that are clarified or accepted or excluded from the act—and I'll come back to those in a moment—in any of those two franchise arrangements, the disclosure requirements of this legislation would apply. The point of the disclosure requirements is to provide prospective franchisees with clear and sufficient business information upon which to make an informed investment decision. Every franchisor would be required to provide prospective franchisees with a single disclosure document at least 14 days prior to the signing of any agreement or any financial transaction, and that would include a deposit. The franchisor's obligation would include notifying the prospective franchisee of any material change that has occurred in relation to the information provided prior to the signing of the contract or the financial arrangement. That means that if the franchise disclosure document is provided but there

is some material change in the information that has transpired subsequent to the provision of the document, there's a statutory obligation on the franchisor to disclose that material change.

Franchisors would be required to disclose all material facts, including material facts related to the matters that are specified in the regulations. I would like to emphasize that this is, in effect, a dual statutory requirement. Material facts, as set out in this legislation, are not limited simply to those things that are prescribed. Material facts other than those things that are prescribed in the regulations are facts that would reasonably be expected to have a significant effect on the price of a franchise or a decision to buy one. The disclosure requirements set out in the regulations would include two baskets, if you will, of information: information on the franchisor, the business or the entity that is offering the franchise; and information on the offer itself, the specific details of the offer.

All the information in the disclosure document under the statute would be required to be accurately, clearly and concisely set out and delivered in a single document at one time. That would eliminate the possibility of piecemeal disclosure or complicated, cumbersome documents that are multi-levelled, where financial information is provided in one document and something else is provided in another document.

This aspect of the legislation, the disclosure requirement, will apply to all franchise agreements that are entered into on or after the legislation comes into force if the franchisee's business is to be operated partly or wholly in Ontario. In fact, the legislation includes two references that are extremely important; first of all, that if there is any attempt in the contract that would affect the jurisdiction of the agreement, then that aspect of the contract would be considered void under the legislation. Also, the legislation is explicit that any of the rights that are provided in this legislation cannot be waived; they cannot be released by a party through a contractual arrangement.

In terms of the detailed disclosure requirements—and here is where my comments will shift out of the legislation itself and more into what the government and the ministry have put on public record as the types of disclosure requirements that would be in the regulations. These are things provided for in the act to be set out in regulations.

The first category, as I mentioned, the first basket, is information about the franchisor. The disclosure document requirements that will be set out in the regulations would include:

Business background of franchisor, directors, general partners, the officers of the franchisor, including ownership, prior experience, the length of time the franchisor has conducted the type of business to be operated by the franchisee;

Litigation history involving the franchisor, the associates or any directors, general partners or officers of the franchisor, and this litigation history would include convictions or pending charges involving fraud, any viola-

tion of franchise law, business practice legislation or unfair or deceptive practices law, any injunctive or restrictive orders that are imposed by or pending administrative actions to be heard before a public agency of any jurisdiction, and liabilities in civil action or any pending actions involving the franchise relationship or involving misrepresentation, unfair or deceptive practices. We've tried to keep the scope of this type of proposal broad so that the type of litigation history that would be relevant to a business relationship is clearly captured.

Another category that would be set out is bankruptcy or insolvency information.

The next category is financial history, and there would be an obligation to provide either audited financial statements or statements that are prepared in accordance with generally accepted accounting principles and with standards applicable to what are known as review engagements set out in the Canadian Institute of Chartered Accountants handbook; and, in addition to that, a statement advising franchisees of the availability of commercial credit reports from private credit reporting companies and informing them that these reports may provide information useful in making an informed investment decision.

If I could add a comment here, this is an extremely important aspect of the proposal because of the existence of these commercial credit reports which do not require the consent of the franchisor to have access to them. They are available literally by telephone and fax for payment of essentially a fairly minor fee and contain all kinds of useful information about the financial affairs and the history and the business conduct of the franchisor. The last aspect of financial history would be that all financial information must be consolidated and presented in one section of the disclosure documents, so all the financials have to be visible in one spot.

Lastly, in terms of the information about the franchisor, a statement describing any internal or external dispute resolution process that's utilized by the franchisor and a brief description of the circumstances under which that process is utilized.

In terms of information on the franchise offer, the disclosure document requirements that are set out in the regulations would include costs; for example, the initial deposit or the franchise fee or whether or not this is refundable, the costs for initial inventory—signs, equipment, leases, rentals—and copies of all proposed franchise agreements. The agreement itself must be part of the disclosure document.

Restrictions: for example, any limitations on the choice of supplier of goods or the goods or services to be offered for sale, or the sales territory.

The policy regarding what are known as volume rebates where there are requirements to buy from a specific supplier and the franchisor receives a rebate in relation to the volume of goods or services, so the policy regarding volume rebates would be included in the disclosure requirements and would include specific information on the

franchisee's buying or inventory obligations, the restrictions, the terms etc.

Territory: for example, policies regarding the exclusivity of the territory or the proximity in which a new franchise may be established and information on what are known as multi-lines or multi-brands that are offered by the franchisor. For example, if a franchisor has one system called ABC Donuts and another system called XYZ Donuts and he's selling ABC Donuts to a prospective investor, he must also disclose the territorial issues related to his second line, even though the contractual obligation is with the first.

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Conditions of termination, renewal or transfer of franchises; training or other assistance programs; how the advertising fund, if there is one, is dealt with—for example, the portion of the fund that's spent on administrative costs or on national campaigns versus local advertising. Other obligations would include the current and former franchisees, a list of the current and former franchisees, as well as a statement encouraging the prospective franchisee to seek legal or other advice and to freely contact other franchisees prior to acceptance of the offer.

Last, earnings potential: There is no obligation to describe earnings potential in relation to the franchise offer. That's optional, but if the franchisor chooses to provide earnings information, the information must include a reasonable basis for making that claim, the material assumptions that are involved and a notice of where the substantiating information is available for inspection by franchisees.

What happens if there is non-disclosure or inadequate disclosure under the statute? Failure to comply with the disclosure requirements carries some very meaningful consequences. They would include, first and foremost, a rescission right. This is unprecedented in terms of a shift in the current environment. The franchisee is able to determine whether or not to exercise these rights. They would not need to go to a court in order to exercise a rescission right.

If the disclosure document has not been provided within at least 14 days prior to the signing of the agreement, the franchisee may rescind the agreement without penalty or obligation no longer than 60 days after receiving the document. So a 60-day clock begins once the documents are received.

If no disclosure document has been provided at all, if the franchisor has not provided a disclosure document of any kind whatsoever, then those rescission rights extend without penalty or obligation no later than two years after entering into the franchise agreement.

If the franchisee decides that there has not been disclosure of the material facts or about a material change and elects to exercise the rescission right within 60 days of receiving notice of rescission from the franchisee, the franchisor must refund any money received from or on behalf of the franchisee other than money for inventory supplies and equipment; buy back at the purchase price any inventory remaining at the date of rescission which

has been sold in accordance with the agreement; buy back at the purchase price any supplies and equipment that has been sold to the franchisee in accordance with the agreement; and compensate the franchisee for any losses that the franchisee incurred in acquiring, setting up and operating the business. The burden of proof under the statute is on the franchisor to go to court and demonstrate that disclosure has been carried out in accordance with the act, otherwise these obligations are in effect.

In addition to the rescission rights, there are rights of action for damages available under the statute. Franchisees who have suffered a loss as a result of the franchisor's failure to comply with the disclosure requirement or because of a misrepresentation contained in the disclosure document or statement of material change would have the right of action for damages against the franchisor or against the franchisor's associate—this is someone who would control or is controlled by the franchisor and who is directly involved. They must be directly involved in the sale of the franchise or exercising significant operational control over the franchisee. The intention of this is to prevent situations where a franchisor can evade disclosure responsibilities by creating a shell company, for example. In addition, the right of action for damages exists against every person who signed the disclosure document or statement of material change.

Duty of fair dealing: Under the act, a standard of conduct would be set up and a duty of fair dealing is created that is identical to Alberta's legislation. Every franchise agreement imposes on each party a duty of fair dealing in its performance and enforcement. The duty would be enforceable through civil action and it applies to all current franchise agreements.

The right to associate: This ensures that franchisees may freely associate without penalty or threat of penalty. The legislation would prohibit contractual or other interference in this right, override any existing contractual provisions that may exist in this regard and provide franchisees with a right of action for damages against any franchisor attempting to penalize or threatening to penalize a franchisee for exercising this right. Again, this would apply to all current franchise agreements.

There are several exclusions from the proposed legislation. Because franchise arrangements take a wide variety of forms, and in order to avoid confusion, there are a number of commercial relationships which, while on the face of it they may look like a franchise agreement, are intended to be excluded from the legislation. These would include employer-employee relationships or business partnership arrangements; memberships in a bona fide co-operative association—that would have to be set out in the regulations; agreements with a certification or testing service that authorizes the use of a certification mark like a CSA standard, for example; agreements between a licensor and a single licensee to license just a trademark, like the use of a logo on a coffee cup or T-shirt; leased departments, relationships in which a franchisee leases space inside the premises of another

retailer and is not required or advised to buy goods or services it sells from that retailer or an affiliate of that retailer; oral agreements; and crown entities, service contracts or franchise-like arrangements between crown entities and other parties which are typically subject to public tendering or procurement guidelines, freedom-of-information legislation or other statutory provisions which do not apply to franchise arrangements between private parties.

There are exemptions from the disclosure requirements that are set out in the legislation, and some that will be spelled out in the regulations. These would include things like transfers, the sale of an existing franchise by a franchisee that is not effected through the franchisor; a master franchise arrangement, where the rights to sell a franchise throughout an entire region or province are involved; the sale of a franchise to an officer or director of the franchisor, if that person has been in the position for at least six months; the sale of an additional franchise to an existing franchisee if it is substantially the same as the existing franchise; sales or transfers in a bankruptcy situation where an executor, administrator, sheriff and so on is involved; a renewal or extension of an existing franchise where there has been no interruption in the operation of the business and no material change has occurred since the franchise agreement was reached. It would also include fractional franchises, which refers to where the franchise arrangements may involve a product or service operated within another business at a very low volume. An example might be a little franchise kiosk selling coffee inside a large retail complex.

There are minimum investment thresholds that will be set out under the exemption requirements. This is intended to ensure that a lot of the small or one-year types of arrangements aren't captured, so if the total annual investment to acquire and operate the franchise doesn't exceed a prescribed amount—that amount has yet to be set in the regs—or if the franchise contract is no longer than a year in length and does not involve payment or any non-refundable fee or there is a multi-level marketing contract, for example, in direct selling arrangements that is covered under the Competition Act or a specific section of the Competition Act.

Last are what are known as "sophisticated investor" franchise exemptions, where the franchise investment is above a threshold and the parties to the agreement can be considered reasonably sophisticated business entities. The amount that is expected to apply there is around the \$5-million mark.

There is also in the legislation what is known as a "mature franchisor" exemption. This is an exemption only from the requirements to disclose the audited financial statements; it is not an exemption from all the disclosure requirements. So a franchisor may be exempted by regulation from the requirement to disclose financial statements if that franchisor meets the criteria prescribed by regulation. These criteria will require that a franchisor have a net worth of at least \$5 million, have at

least 25 franchisees conducting business at all times during the five-year period immediately preceding the date of the disclosure document, and have conducted business for at least five years in the province immediately preceding the date of the disclosure document. Those three conditions are essentially identical to those in the Alberta statute. Then there is a fourth one that will exist in Ontario, and that is that the franchisor not be the subject of any judgment related to any disclosure requirements under this act during the five-year period. Obviously that aspect can't be applied until the act has been in place for five years, so as a transitional measure the minister will be able to, by regulation, exempt any franchise from providing financial statements based on an application from a franchisor if the franchisor meets criteria prescribed by regulation, which would be essentially similar to this. The regulation power itself in this area and this specific ability to grant these ministerial exemptions would sunset after five years as this last aspect of the mature franchisor exemption kicks in. Franchisors who are eligible for the mature franchisor exemption would remain obligated to meet all other disclosure requirements and would also remain subject to all other provisions of the legislation, including the duty of fair dealing and the right to associate.

That, I believe, covers the landscape in terms of the act itself and how it interacts with the regulations. At this point, if there are any technical questions I can respond to, I'll leave it at that.

0930

The Acting Chair: Are there any questions from members of the committee?

Mr Martin: I want to thank you for taking the time to come and share with us the details of the act as it is proposed. I understand the effort that went into making sure there was a fairly comprehensive disclosure requirement in franchise dealing in Ontario.

One of the questions I have is around how that would actually happen and what vehicle will be put in place by the government to make sure the disclosure statement is actually prepared and delivered, that it meets the requirements, and that the franchisee isn't left out on his own trying to decide whether he has got what he needs or what he is supposed to have under legislation.

Mr Hoffman: The best way I can answer that question would be to compare it with other important areas where disclosure requirements are typically dealt with in legislation and there is a reliance, once the disclosure requirements clarify the obligations of parties, on any problems in relation to that disclosure being dealt with through the marketplace, through the identification of an inadequacy in the disclosure and then dealt with between private parties.

Cost-of-credit disclosure is a good example in this regard, where there is legislation in every province, including Ontario, which basically sets out how financial institutions or automobile leasing companies, for example, must calculate the cost of credit and how that information must be presented to consumers. There have been

recent amendments proposed in Ontario that would include leasing arrangements in that regard. There is not, associated with that, a filing obligation or a mechanism which some government department somewhere reviews pro forma for every credit card company's calculation method etc, or a review of all lease agreements or filing requirement. But as a mechanism, over the years it has proven to be extremely useful, and there has not been any evidence that there has been abuse of the legislation or any kind of comprehensive or systemic problem in terms of the marketplace providing the types of disclosure anticipated by the bill.

That said, there is no question that anyone who is of fraudulent intent may choose to try to sell a bogus franchise or may make assertions around credit arrangements that are essentially fictitious in an effort to get money. Those are dealt with, essentially, through Criminal Code enforcement.

Mr Martin: All of that excepted, there is certainly a provision also, though, in Ontario legislation that, for example, when securities that are traded on the market are presented there is some effort to make sure they are correct, and that piece of legislation continues to evolve and unfold. We're talking somebody like myself or Mr Gilchrist buying stocks worth maybe \$1,000 or \$2,000; somebody else may be buying stocks worth \$1 million.

In franchising, typically a person is investing some, let's say, bottom line, \$50,000 to maybe \$200,000 worth of their life's savings. Why wouldn't you see that as a serious enough investment when you consider some of what has gone on, particularly when you look at some of the stories and you hear some of the details, to have something a bit more concrete that the government would have some control over to make sure these exchanges of information are happening and that they are correct and that people aren't exposed any more than they have to be to the fraud artists who are out there and only too willing to take advantage of some poor soul who has absolutely no experience whatsoever in business, which is so often the case where franchising is concerned?

Mr Hoffman: Frankly, I think the policy intention of the bill clearly recognizes the importance of disclosure and ensuring that the right information is in the right individual's hands in a timely fashion in order for them to make an informed investment decision.

I suppose one can argue whether or not having the same information reviewed by a third party is useful, and indeed that's contemplated. The disclosure requirements would include quite a strong statement advising the person to, in effect, take the disclosure requirement and the contract itself and use a good third party to help guide a prospective investor in making a decision.

Certainly the trend in Canada, given that there are only two provinces that are legislating in this area, has been away from requirements to basically have on file in a government office somewhere the same information that would be statutorily provided to the franchisee. There was certainly a policy intention to try to have Ontario's legislation and Alberta's legislation broadly comparable

so that a company that is complying with the requirements in one province is, broadly speaking, complying with the requirements of the other.

Mr Martin: But those who have some knowledge of what's unfolding in Alberta will tell you that in fact that system isn't working, in some instances precisely because there is no vehicle in place to make sure it is going to work.

I have an article here from the *Globe and Mail* of Thursday, October 22, 1998, where a Mr Stainton is stating that the act is being ignored because there is no third party from the government overseeing and checking this out. He says: "Under the old system, franchisors had to file disclosure documents with the Alberta Securities Commission; today, there's no such requirement." It goes on to say that he sees "'many cases' of companies selling franchises without providing investors with suitable disclosure documents." That's under legislation that is similar to the legislation you are asking us to accept as is here today.

Mr Hoffman: I can't comment on the assertions of this individual, whether they're in the media or not. I know that in providing the policy advice to the government on the bill, one of the things we tried to do was to communicate very directly with our counterparts in the Alberta government and indeed outside Canada. There is no information that was ever presented to us, and we specifically asked for it, that suggested there was any systematic ignoring or violation of the disclosure legislation in the province. We certainly sought examples of litigation or information around what may be going on in the courts in this regard.

0940

The Acting Chair: We're going to need to stop questioning due to the time. I think there will be lots of opportunities through the week to follow up on those.

Just before we move on to opposition statements, I'll ask for a brief closing comment.

Mr O'Toole: Thank you very much, Mr Hoffman, for a broad overview of the intents of this legislation. Also, I just want to reassure members of the committee that there will be ministry policy staff in attendance throughout the hearings to answer the more technical questions.

The Acting Chair: I'd like to now call on Tony Martin for the opposition statement.

Mr Martin: I want to start out by saying how happy I am that we're here today considering this piece of legislation. You're right, it has taken far too long. Other governments, including my own, didn't do the right thing when they had the opportunity to move aggressively forward to put in place legislation that would have covered this area. Perhaps today, had they done that, we would be looking at further legislation, having had some experience under our belt of how the legislation that is being proposed today may not actually have done the job. So I'm appreciative of the effort of the government and of the work that has been done by previous governments.

In fact, there has been a lot of work done by a lot of people over quite a period of time who recognized that

there are some difficulties in this area of business dealings in the province. The initial concern raised and studied, entered into, goes back as far as the late 1960s, early 1970s and perhaps further. That's where I picked up a piece when I got into this, and I'll talk in a few minutes about my actually getting into this piece of work and how it evolved out of some difficulties that some of the small business folks in my own town of Sault Ste Marie got into.

Back in the late 1960s and early 1970s, under the leadership of the government of the day, a predecessor of the present government, one Arthur Wishart, a Conservative MPP for Sault Ste Marie, who was the Minister of Financial and Commercial Relations, commissioned a report, and it came back and was named the Grange report. In it there was reference to doing some things by way of legislation to deal with the evils of franchising. I suggest to you that many of those same evils continue to exist today because no regulation has been put in place and because the industry, or the franchise sector of industry, in Ontario has grown so substantially since then. So, for me, it goes back quite a bit further than either the effort made by the Bob Rae government and Marilyn Churley between 1990 and 1995 and then the work that was carried out subsequent to that, from 1995 to now by the present government, initially Mr Sterling, then Mr Tsubouchi and now Mr Runciman.

Having said all that, I'm just very happy that we're here today and actually have the opportunity to look at a piece of legislation that has been proposed and presented and to hear from folks who have had direct experience in franchising across this province, to hear from folks who have acted on behalf of franchisees and franchisors and to hear from some people who don't have a vested interest but who simply are coming to share with us some of the work they've done in studying this very important relationship over a period of time now. I'm hopeful, as we move on, that the co-operative nature of the discussion to date with M^{me} Boyer, Mr O'Toole, the minister and others whom I've had the privilege to interact with over this legislation will continue, that we will work together to find a way to do what is best for the industry, and I would suggest particularly for franchisees, who tend to be struggling at this point in time, no matter how you look at it, under some duress, and who are looking for some relief and some vehicle they could use to redress some of the issues that they see challenging them as they try to be the best they can be and to contribute in a constructive and positive way to the economy of the local area in which they operate.

So I guess my hope, to all of the members of the committee, is that we will continue to work co-operatively to find a way to do at this particular junction what is necessary, recognizing that there has been some experience that we can look at.

We can certainly look at the Alberta legislation, and I referenced it a few minutes ago. It's very similar to the legislation that's being proposed here today by the government. Many who have watched that and participated

in Alberta in franchising will tell you that it really hasn't changed the lay of the land that significantly. We still see significant numbers of franchisees going before the courts to have disputes resolved, and any effort at mediation before getting to the courts has not been successful. It is in fact costing some of these small business entrepreneurs, who in many instances have already lost their investment and are already in debt up to here. They are now having to come up with money they don't have in order to pay lawyers and to pay for court proceedings that at the end of the day in most instances don't turn out in their favour anyway, because they can't outlast the deep pockets of the franchisor systems and really can't in the end afford the cost of the kind of lawyer in many instances it would take to take on the battery of lawyers that often face the franchisor when he shows up in court, sometimes by himself or herself but most often with a lawyer he can't afford.

There is also a wealth of information that we can look at and we'll hear about in the US experience. There aren't any jurisdictions left, I don't believe, in the US experience that aren't covered by some regulation or other. We will hear this morning from Ms Susan Kezios, who has a tremendous wealth of knowledge and understanding of what's going on in the US and those jurisdictions re best practices, what legislation is in place. They've had legislation in place actually for 30 years. We're only playing catch-up now. My concern, having listened to the policy analyst from the ministry, is that we will put in place legislation that will be akin to what the US put in place 30 years ago and that it will only be 30 years down the line that we will come back again to perhaps revisit this issue and actually do then what we had the opportunity collectively to do now for a very important sector of business in our communities across the province.

I don't think anyone will deny that we have a problem, that we have a situation akin to, in my view, and this is probably fairly biased, David and Goliath, where you have franchisees going up against franchise systems that have not lived up to, in any way, shape or form, that which was presented to them in what I term the courting period before they actually signed the agreement that they signed to do business together. It's my understanding that when two people go into business together it should be a relationship where each has an opportunity to realize the potential to make a living—a good living—if they work hard, if they bring their intelligence and their brain to the job, if they do all the due diligence that's required and keep up with the best practices in the business; that in fact they will be successful, and that if a franchisee is successful it makes sense, then, that the franchisor would also be successful.

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But we see too often today in Ontario as we read the reports that are coming out in some of the newspapers—and you'll have to look to the news outlets for that kind of information, because I had our research people at Queen's Park do some work for me in preparing for

today's hearings, and they tell me that a lot of the information I would have needed in order to make the kind of case that's required to call on the government to introduce legislation that goes a lot further than what's being proposed doesn't exist. Even the Ministry of Consumer and Commercial Relations, who should be keeping track of complaints by franchises to the ministry, has not been doing that. That information isn't available, or, if it is available, there would be a fairly long-drawn-out piece of work to do in order to get that information. It isn't available.

I share with the committee—we'll circulate this later—a note that I got from a research officer of the Legislature here to indicate that the kind of information I required, that I wanted, so that we could take a look at exactly what the nature of the complaint is and what we could do by way of this legislation to resolve some of those complaints, is just not available. There will be a document circulated later that you will get that will speak to that.

It's also obvious to us from inquiries that we made to banks, that happen to be another of the major partners in this piece of work that's going on, that banks tend to be, at the end of the day, one of the institutions that gain very generously from some of the dealings between franchisors and franchisees in that most franchisees have to go at some point to the bank for a loan to top up or even, in some instances, to get the money in the first place in order to enter into the agreement that franchisees want to enter into so they can participate in this business. Banks, at the end of the day, also happen to be one of those players when it comes to a default or a bankruptcy or a failure of a franchise system, so where in many instances the franchisee ends up in some pretty dire straits at the end of the day, it's normally the franchisor and the bank who do everything in their power, with the power and resources they have, to make sure that their interests are protected.

We went to the banks as well to see if we could get some information on this, what statistics there are as to how many franchisees went under and failed and what impact that had on them, and that information wasn't forthcoming either. They either didn't have it or they weren't willing to share that information with us. I suggest to you that certainly in my experience banks have information on everything. There isn't a thing I do in my life that my bank doesn't know about. In conversation with those institutions as a person trying to get a loan to buy a car or whatever, I soon find out to what degree of detail they have information on record about me, so I find it strange, in a circumstance where you have significantly more at stake and significantly more generous financial dealings and relationships than perhaps I would enter into, that there isn't that kind of information available.

I will be sharing with the committee as well today some information that was gathered from the banks, some of the questions we asked, and then some of the answers we got, which were primarily: "We don't have any answers. We don't keep those kinds of statistics, and

that kind of detailed and specific information isn't readily available." That makes it difficult for us to do this job and to make the case we need to make here that in fact there are some problems in the industry of a significant financial nature. I'll be circulating that to you all in a little while as well, so that you can have that at your disposal.

Having said all that, not being able to get the information from those sources, it was incumbent on me to do the job that I think is required of me in this instance. I've been working at this legislation now for some five years, brought into it by some experience in my own community where now we have at least three very successful, very important, very good corporate citizens in my community who are no longer doing business because the parent company decided they wanted to do something different and those particular franchisees didn't fit into the plan.

We could have a long conversation about why the corporation didn't feel they fit into the plan, or my perspective on why they thought they didn't fit into the plan, but the long and the short of it is those people are no longer in the business that they wanted to be in, that they had invested life's savings in, that they had borrowed money to be in, that they were actually very successful in. In the instance I'm sharing with you, of franchisees in my own community being damaged by the unilateral decision of franchisors, we had three people who had started out in the grocery business, stocking shelves, carrying out bags of groceries and had worked their way up to become the best they could be in the business. They loved the business.

As a matter of fact, I was talking to one of them just a couple of weeks ago and she was indicating to me, even though she has gone on to do something else now, that she misses terribly the work that she used to do. Some of the missing that she was doing wasn't quite as tangible as others, but she loved the work that she did and was very good at it. She took a business that was doing under \$1 million worth of trade in a year to well into the millions of dollars of trade, but was at the end of the day deemed by the franchisor as not successful enough, as not fitting into the corporate image that they wanted to project and not sophisticated enough, perhaps because she comes from a town not quite as big as Toronto, Sault Ste Marie. We tend to think we're fairly sophisticated up there, but in the eyes of this particular chain that wasn't the case. So she's not in that business any more.

If somebody, though, was looking for information on any one of those three circumstances, you would not find it in the files of the Ministry of Consumer and Commercial Relations. You probably would not get that kind of information even from the banks they dealt with. You probably would get it if you went to their lawyers—you certainly wouldn't get it from them today, because each one of them has signed the infamous gag order. That is something we'll talk about, hopefully, here over the next few days as well. They cannot speak to us. Some of them will appear before us this week, some of them incognito,

in camera, because they are still afraid even though we have immunity here—anybody who participates formally and officially at a standing committee of the Legislature has immunity, the same as we do, to ask questions as we feel free and to say what we like. They're still not comfortable in coming forward, because they know one way or another they can be got at and their life can be affected by doing that. We wouldn't be able to get that information from them even by going to them and asking them specifically to share with us what happened and what went on, because they are under the threat of legal action if they share that with us.

So we had to go to the press and in fact some of you may be aware of an organization called the Canadian Alliance of Franchise Operators and Les Stewart, who was himself a victim of a system and continues to be one of the most effective advocates that I've come across in my dealings in this area. He and I have put together a couple of documents, two of them, an A and a B here, that I'm going to be sharing with all of you. This is a compilation of the stories that have appeared in the media over the last five to seven years in Ontario. It's massive and if you look at the front pages of both documents, there are some interesting trends as to the ups and downs in the business.

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Interestingly enough, there was a real flurry of activity around the 1993-94 period, when the Pizza Pizza battle was brewing. All kinds of material and information was being written and reported on. Then a suit was launched, and one of the people writing the articles, particularly for the Toronto Star, was chilled out and no longer wrote on this business any more. So the number of articles that appeared was significantly reduced, which indicates to you the kind of pressure tactics and intimidation that go on and are going on out there when somebody actually has the temerity or the intestinal fortitude to bring something forward and challenge the system and even go public with it.

These two documents speak of the terrible experiences of some 4,600 families in this province who have been damaged by their relationship in franchising. I suggest to you that it's only the tip of the iceberg, because only a small number actually come to the surface and get the exposure that some of the folks in here have had. Some 5,000 franchisees are before the courts in Ontario every year. That should say something to all of us here as to the seriousness of the work we do and the challenge in front of us to go much further than what is proposed in the bill that has been tabled, even though I believe it is a very serious and good start to the conversation.

We need to get beyond just the requirement to disclose; we need to get into actually regulating the relationship once it begins to unfold. We need to define more clearly the issue of fair dealing. I suggest to you that if we don't define it, it will be defined in the courts at the expense of the franchisees, who will end up carrying the freight and paying for it, because it is in their best interests to have that definition honed and in place. It

won't be the franchisors who will bring that forward and pay the freight to have that done.

So there is a lot of work that we need to have done. I'm happy and excited that we are here today actually taking that next step to have that done. My hope is that all of us who have worked so co-operatively to this point to get it to where it is, including the minister, take it around the province—Sault Ste Marie, Ottawa, London—so we can hear from folks on their home turf, where they are most comfortable, their stories and what they might suggest we could do to make this legislation better. I look forward to participating actively in that exercise.

I have a lot of material that I need to share with folks, and I'll be asking the legislative research folks to help me with that, so we can all be as informed as we possibly can. I urge you to read some of it, because it is really telling and informative, and it will be important at the end of the day if we are going to do the right thing here and make sure that 30 years down the road we are not coming back and looking at putting in place some of the things you are going to hear from Susan Kezios this morning, which are already in place in many US jurisdictions. Thank you very much.

The Acting Chair: Thank you very much, Mr Martin. We will resume opposition statements with Mike Colle.

Mr Mike Colle (Eglinton-Lawrence): Thank you, Mr Chair and members of the committee, for being here today. I know you all have a great interest in this new legislation, as have a lot of stakeholders. I think it is an opportunity, really, to do the right thing. I look at this piece of legislation as an opportunity, in essence, to set down a set of rules that will govern this growing, I might call it, industry, and I hope we take this opportunity to do it right. We may not be able to visit it again, and that is why I think we have to look at all possible aspects of the new legislation to ensure, obviously, that it protects both parties.

As you know, one trend that is most disturbing is the amount of litigation that takes place. I don't think that either side, the franchisee or the franchisor, wants to make the franchise industry essentially a pension or annuity plan for lawyers. I think they can do well without the franchisee or franchisor contributing to their pension funds. That is why it is important to look at this legislation and try to find ways to avoid litigation as much as possible. If we can do that, we're going to save literally tens of millions of dollars in legal fees, not to mention the personal and family, and in some cases corporate, agony that takes place as a result of the litigation that seems to be the growing trend in resolving disputes. That's why this is an opportunity.

I know there have been a number of recommendations. Basically the legislation puts down some precepts which are quite sound. What we have to do, though, is to ensure that it is strengthened, that both sides are protected. Especially in this case, as we know, the most vulnerable are obviously the franchisees, because we're dealing with immense corporate clout in some cases and

an individual who puts their life's savings into a small business and tries to make a living. We as legislators need to make sure we protect the franchisee from undue costs that would result in some kind of dispute.

I wonder whether the dispute resolution mechanisms in this bill are strong enough. The one recommendation that I would hope to see come out of this, if possible—I think it would solve a lot of problems—is perhaps having a franchise ombudsman. A person could be in place to handle these disputes at a certain level, with a time frame where resolutions could at least be brought to this ombudsman and he or she could be of assistance to avoid immediately going into litigation. That would really help in putting forth some protections in this bill. At this point in time, the dispute resolution mechanism seems to be not sufficient to avoid costly litigation.

I've been talking to people who have franchises, and some of them are quite happy, they're doing quite well financially. I know of one case in particular, a family friend who has done quite well with his franchise. I've been checking with him. He's a young person who is doing quite well. He's very satisfied with the company he's dealing with.

On the other hand, in this last month there was a documentary on television about a couple of cases of franchisees. In one case, they were in the coffee business. They had a very successful business and were doing quite well. The franchisor, who in the small print of the contract was responsible for the leasing agreement, made the decision that the landlord wanted too high a price for the lease. Therefore, where the franchisee would have gone ahead and signed the agreement with the landlord and thought he could still do well, the franchisor decided it was basically too expensive, despite the financial projections which showed he could probably handle the increased rent. Subsequently the operation was shut down, because it made the agreement null and void. That individual who was running a successful franchise operation had to close down. The operation was gone, and the years that he spent growing the business were gone, flushed down the toilet. He lost that business opportunity, and it wasn't because he was negligent. By the way, within months of closing that operation a new franchisor came in and signed a leasing agreement with another coffee company and opened up in the same location.

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Obviously there is a lot of onus on the prospective franchisee to read the fine print. The cooling-off period helps in that regard but, as you know, the tendency is for small business persons to be so anxious to start this business that sometimes they overlook the potential pitfalls in the agreement they sign. I don't know what we can do as legislators to try and protect people from their own anxiety about getting into something they feel has great prospects. It's very difficult to control that, but there should almost be a warning label on every agreement signed "caveat emptor." There is this great urge, because one of the successes of franchising has been based on this whole concept of branding. People want to buy the brand

so they're willing to expend obviously what are extra dollars to buy into the brand. There was a book just published by Naomi Klein here in Toronto talking about the power and influence of branding. The prospective franchisees are so anxious to be part of this brand that they sometimes overlook the financial obligations, the long-term implications of what they're getting into.

In that same documentary on television they talked about a doughnut operation. I don't know if this legislation—I have to look again through the fine print of the legislation—will protect operators. In this case the person bought a doughnut operation, very successful, doing quite well, and I think he bought a second one. But then the franchisor added their own doughnut operation in close proximity to the existing two, and the franchisee's revenue began to go down, so there was basically infringement upon his territory.

Legally, the franchisor was protected. It's very clear in the agreement signed between the franchisor and the franchisee that they can open up an operation within so many kilometres, or feet or whatever it is, of the operation. What they do have is a clause which says, "You have the right to buy out or to purchase the new outlet in the vicinity." That's your protection. But if you already own two doughnut shops, why would you now all of a sudden try to buy a third one which is going to compete with the two existing ones you have in that neighbourhood? What happened in that area was that there ended up being about eight doughnut shops by the same franchisor, to the point where the gentleman who did quite well with the first two doughnut shops had to close the doors and walk away from those two shops.

What started off as a very successful entrepreneurial exercise ended up being a disaster for this individual through no fault of their own. The franchisor was also protected, because it was stated categorically in the agreement that you had the option to buy out a new franchise in your territory. That was the protection that person had. But I don't think that's realistic protection, considering there are just so many dollars to be made selling doughnuts in a territory—no joke about dollars to doughnuts or whatever it is.

To me, these are very concrete examples of some of the realities that exist in this industry called franchising. There is no doubt it's going to continue to grow, because it seems to be easy to piggyback on a brand, if you've got a good brand and a good product, and the franchisor has obviously invested in it at that point where they've done quite well because they have a good product, and they deserve recognition for that. But the budding franchisee who sees the success and jumps on the bandwagon doesn't realize, and sometimes doesn't have the protections in place, whether it be through legislation or through their own due diligence, to find out what they have to be aware of and whether they can afford legal counsel.

Certainly the franchise lawyers are experts, there's no doubt, in drawing up contracts. I'm sure the contracts cover every potential loophole etc. I just wonder whether

the franchisee can afford that kind of legal expertise on the other side, because those contracts can't be altered. I'm sure it's a cookie-cutter contract that goes to every franchisee; they're very similar.

The onus is on us perhaps to try and find ways to protect the franchisee because it's probably not going to be done in the contract signed by the franchisor. That's human nature. It's the marketplace, the way it works. If you have a very successful company, they're going to try and ensure that these franchise operations are profitable. That's their right, and they should proceed to do that. That's why the onus falls back on us to try and find ways in this legislation to strengthen it so that there is a process which is transparent, which, as I said, avoids costly disputes that involve third or fourth parties and years of litigation.

In many cases, from my reading on this industry for the last two or three years, there are people who essentially have a little nest egg they're looking at for a possible retirement. They may be changing occupations in middle age and they legitimately have put all their family—usually it's family—or individual savings into this employment possibility. In essence, it's a very good way for people maybe to make a living. They can be their own boss, as they say. They can control their own destiny by working hard. Most of them, it seems, who own franchises have a history of being very dedicated to their business, and the franchisors would agree in most cases that is the case, that they put in long hours, seven days a week. It's not a part-time job, it's not a nine-to-five job; you have to put your blood, sweat and tears into this investment. It's not like putting money into NASDAQ or whatever. You have to in essence be there to ensure that the business is successful.

I have a lot of sympathy for franchisees because they put in their life's savings, they work hard and they are the people I would like to protect as much as possible. If we can find ways in the bill to make it fair, to make it as much as possible immune to an ongoing litany of legal disputes, if we can do that and ensure there's a process where we almost obligate perhaps—we almost have to do that—the franchisee to read and go over and have perhaps another party go over the contract to ensure that they understand the implications of that contract, it is so important. I wonder how many of them—sure, they go over the main points of the contract—have done enough. I don't know how you do that, and it's very difficult to oblige franchisees to protect themselves. No doubt that's probably a big problem that's on their own shoulders and no fault of the franchisor or of the industry itself. It's just the nature, the chemistry of franchising, and I think it's going to continue to be a growing business.

If we put certain protections in, if we listen to suggestions made by some of the individuals or groups, maybe we in Ontario can have a piece of legislation that can be very cost-effective and forward-looking. So this again to me is an opportunity that is really quite extraordinary for us, because these pieces of legislation sometimes will never get looked at for another 20 years. We have this

opportunity to do it right. Certainly my party believes in trying to do what we can to put forth suggestions, and I hope the government is open to suggestions, because I think it's in everyone's best interests.

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As I said, it's an economic and entrepreneurial activity that is sound. Franchising has a lot of good aspects to it, there's no doubt about it, but it does have some serious pitfalls that can be very detrimental to the individual who puts their life's savings in. There's a variety of different franchises, and some of them really have very few litigation problems. I've talked to people in the grocery business etc who say, "I'm doing very well financially, and I have no problems with the company I'm working with," or the small operator who's selling pet food, whatever it is. Some of them are doing quite well and they have no problems.

I'm worried about people who enter into a business arrangement who essentially have no protections. The way to ensure we don't have everybody who has a gripe with their franchisor ending up going to the ombudsman here in Ontario, saying, "I don't like it," and their business is doing poorly and they're not putting in the time and the effort—obviously, we don't want that to happen. We're looking to protect the legitimate person who has put their life's savings into a business, the legitimate person who has done everything possible to protect themselves and to make their business prosper. Those are the people who somehow I would like to protect, because I think they deserve protection, and I think even the franchisors would agree. They're trying to support those individuals, the legitimate person who makes that legitimate investment, and both sides end up doing quite well.

I appreciate your listening to my comments, and I look forward to doing something that I think will avoid a lot of agony and anxiety for years to come. I certainly offer my party's support to try to work with all parties, all stakeholders and the government to essentially do well by this great opportunity here. Thank you for listening.

AMERICAN FRANCHISEE ASSOCIATION

The Acting Chair: I'd like to call upon the first expert witness, Susan Kezios from the American Franchise Association. Welcome to Toronto, Chicago's sister city.

Ms Susan Kezios: Thank you, Mr Chairman and members of the committee. My name is Susan Kezios. I am president of the American Franchise Association. We're based in Chicago, Illinois. We are the largest trade association in the United States, representing the interests of small business franchisees. We have 16,000 members, by the way, who own over 30,000 outlets in about 65 different industries all over the United States.

I should tell you that I am a former franchisee. I was an employee in a franchise. I worked under two franchisees. I thought that the reason the franchise was having problems was because the franchisees didn't know what they were doing. I eventually bought the

franchise from the second set of operators. I became the third franchisee in about four years and realized it was because the franchisor didn't know what they were doing at the time, which is why we were having such problems.

I worked with our fellow franchisees around the country. We formed our own franchisee association. We started training ourselves. In conjunction with the franchisor, we developed advanced programs that the franchisor hadn't been developing. The franchisor hired me as vice-president of marketing, so I went and worked for the franchisor.

I have had an interesting career track in franchising: employee in a franchise, franchisee, vice-president of marketing for the franchisor, and in that capacity I was the franchisor's liaison to the franchisors' trade association in the United States, which is now our opposition on legislation of this type in the United States. I served on several of their women and minorities in franchising committees.

That is a little bit about my background. I also have my own business, called Women in Franchising. We encourage women and minorities in the States to get involved as entrepreneurs through franchising. You have to understand that early on I was concerned that women would sign bad contracts with franchisors. I realized as years went on that it was all white men in the United States who were also signing bad contracts with the franchisors. I should tell you that I am not a lawyer. I will probably offend somebody here today—I will probably offend a lot of people here today—but I'm known in the United States for speaking rather bluntly and candidly about the problems that franchisees face, having gone through many of those problems myself.

I thank you for the opportunity to be here and to present some testimony. The two things that I can possibly share are the American experience and how you might restore a level of honesty and reduce further opportunities for deception in franchising here in Canada. To summarize where I'm going in my remarks, Bill 33 doesn't go far enough; it doesn't go to the heart of the problems that current franchisees face. We have 30 years of disclosure legislative history in the United States, and disclosure alone doesn't work. The third point is that the duty of good faith that is offered in Bill 33 is not enforceable; it's not strong enough.

I can portray for you where the United States is and what we consider to be the state of the art. The United States Congress is right now looking at and discussing very strongly current franchisee problems, because they realize the current scheme has not worked for 30 years. Actually, the American Franchise Association has maintained in the United States that the potential franchise investor would be better off without disclosure, just to know that there is no protection, because in the States there is an appearance of government oversight with no actual teeth. Unfortunately, when I read Bill 33, that is what I am reading as well: the appearance of government oversight but with no real teeth for enforcement.

Part of the problem is that once you sign a franchise contract you're not in pre-sale any longer. Disclosure has to do with pre-sale, what happens before you become a franchisee. The significant problems for current franchisees are involved post-sale. In the States, we call that "relationship legislation." You have elements of relationship legislation in Bill 33, the freedom to associate and the duty of good faith, but, as I said, the duty of good faith seems to be very weak.

The main thrust of franchise disclosure laws in the United States are all pre-sale to deter fraud and misrepresentation in the pre-sale process. The current disclosure scheme in the US, and it seems to me what Bill 33 is modelled after, was enacted in the 1970s based on a 1960s marketplace. Times have changed. You need to jumpstart yourself maybe a little bit by looking at the US experience and get yourself to a newer position. You are wise, and I was very pleased to see freedom of association and an attempt at duty of good faith in Bill 33, because you need to incorporate elements of relationship legislation right out front.

I'll talk a little bit more about US disclosure laws. California was the first state to enact a disclosure law, in 1971. Now there are a total of 14 states that have disclosure laws where a prospectus, an offering circular, has to be provided to the potential franchisee at least 10 business days before they sign the contract or give any money to buy the franchise. In 1979 the US Federal Trade Commission promulgated the regulation. It's called "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures." We call the FTC franchise rule "the rule." I might refer to it in any number of those manners.

The FTC requires pre-disclosure of 23 items of information. There is no central repository for the documents; no one reviews the documents. Supposedly franchisors are providing complete, accurate and truthful information. Only in those 14 states that require some kind of review and registration of the documents is somebody actually reading the documents. In the other 30-odd states there's nobody looking over the shoulder of the franchisors, reading to see if these documents are in fact true, accurate and correct.

By the way, the franchisors' trade association in the US lobbied for 10 years prior to the promulgation of the FTC franchise rule in 1979, saying: "You don't need disclosure. The industry is fine." However, presale problems were so acute that the federal government in the US said, "Hey, we're going to enact disclosure legislation." Today, the same people, the franchisors' trade association, who lobbied against presale disclosure are saying: "That's all we need. Disclosure is fine." In fact, they continue to lobby against any promulgation of any new kind of standards of conduct.

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To most members of our association, probably 90% of them, the FTC rule borders on irrelevancy because, again, it's a pre-sale. The majority of our members, and we've surveyed our members, have been in business for

longer than 9-point-something years, so these are people who've gotten to break-even and profitability. They've been around for a while. They are what we'd consider successful franchisees, mature franchisees. They feel the FTC rule does not help them because they signed the contract and now their problems are post-sale. In fact, the Federal Trade Commission has told me four times in public hearings: "Ms Kezios, we will never get to all the issues your members consider substantive. We just don't have the time; we don't have the resources. We can't possibly deal with them."

As a matter of fact, the United States Senate asked, in 1993, for an accounting of the FTC's enforcement of the franchise rule, and the General Accounting Office found that the Federal Trade Commission acted on fewer than 6% of all franchise complaints brought to it and took to federal court only 2% of those. I have attached to my written statement a copy of that report so that you can in fact see what was reported to the United States Senate.

The important thing that you have under your Bill 33 that we don't have under the FTC rule is a private right of action. In the states that do not regulate and register franchise documents, those franchisees have a private right of action if they find out that their franchisor may have violated the FTC rule. In the other 30-odd states, the franchisees are supposed to go to the FTC and ask the government to get redress on their behalf. Now you're seeing why our members feel the FTC rule is irrelevant. We have actually called for it to be abolished, because it would be better that the investor knows that there is no government oversight. Don't give the appearance of government oversight without any real enforcement, any teeth.

There is also under the FTC rule no obligation for franchisors to disclose historical financial performance information. That's what I heard this morning that was also not required in Bill 33. That is inherently misleading to an investor by omission. Why else do you buy a franchise? It's like buying a car without having an engine in it. You buy a franchise because supposedly you can make a living, a good living. All franchisors are selling a proven business system. They supposedly have a proven operating prototype that they are selling to someone. They have historical financial data, they have royalty reports from the franchisees, they certainly know how much those units are doing, and they certainly should be mandated to disclose that information.

In the States, it's a voluntary disclosure, and since 1979, 85% of franchisors have volunteered not to disclose that information. They don't say that to you when you're buying a franchise. This, in fact, may be what will happen in Canada. They don't say, "We can give this information on how well some of our units have done." They say: "Ah, the government; we're prohibited by law from giving you this information." They are actually twisting the truth to a couple, perhaps, who have a severance package, retirement money, who are not wise in the artful terminology of what is going on in franchising that the franchise lawyers have written. So they believe that

the federal government prohibits giving you any financial information. So that is actually a very serious omission in both the FTC rule and in Bill 33.

Let me talk a little bit about relationship legislation in the United States. Again, this is different from pre-sale. Relationship laws actually started springing up in the States in 1972. In 1971, California enacts the first disclosure law and right away there are relationship laws starting to be enacted. Why? To adjust the imbalance in the ongoing relationship between franchisor and franchisee. This is all post-sale.

As franchising has grown in the United States, another 20 states have enacted some kind of franchise relationship. So you've got the 20 states with franchise relationship laws; you've got the 14 states with disclosure laws. Many of them overlap, but 24 of the 50 states have some kind of franchise laws. In the States, it is often not a consequence of the franchise chain you are buying as to how fair or how protected you are; it depends on what state you're in and the law changes. Usually the franchisor contract, the venue, will be the home state of the franchisor because they know how important home court advantage is in a legal sense.

You could be a California franchisee who bought a franchise from a franchisor based in Connecticut, which is on the east coast. In order to take up any kind of dispute, mediation, arbitration or litigation, you have to go to the home court of the franchisor. How many franchisees in California do you think are actually going to do that? They'll say: "Forget it. I've lost my \$150,000. I'll go get a job. I'll close the place down and I'll go on with my life." That in fact is often what happens.

The state legislatures have recognized over the years that franchisees are only governed often by lengthy and totally one-sided contracts drafted by franchisor attorneys that are basically non-negotiable. A franchisee relies on the trust they place in the franchise salesperson rather than on what to a first-time investor is impenetrable legal documentation.

The most recent example of a relationship statute to all business format franchisees in the States is the Iowa Franchise Act, which is the most recent one. The Iowa Franchise Act, enacted in 1992, has a duty of good faith in it. Actually, the state of Washington has had duty of good faith since 1972. So there are thousands of franchisors doing business in both of those states with an enforceable duty of good faith. There is not one reported appellate case in either of those states—there's no litigation is what I'm saying—under an enforceable duty-of-good-faith provision. What I would propose to you is that an enforceable duty of good faith would cause franchisors to be more reasonable and factual and fair before they take some actions post-sale because they would know in fact that there is a statute that they can be brought into court with. That seems to be the only market force that franchisors in the States truly fear, the fact that there is a statute and they can be brought into court.

I don't think it will increase litigation. I think something like that will actually deter litigation, because the

rules of the game will be better defined. It's like speed limit signs. You have a speed limit sign up and surveys in the States are that 90% of people stay within the speed limit, but the 10% of those who don't, when they get caught, there is a problem. In fact, I think that's what you may be trying to do here; that is, to set up a speed limit sign—rules of the game.

In the US, we visualize it as kind of a patchwork quilt of a federal rule requiring disclosure but no registration or review of the documents. Then you've got all these different states with different requirements, either disclosure pre-sale or relationship post-sale requirements, yet the problems between franchisors and franchisees continue to escalate in the States.

What are some of the issues that franchisees face in the States and they're facing here? I've seen enough of the press coverage. I've heard enough here in Canada. I could walk into any meeting with franchisees blindfolded and probably talk about eight out of 10 of the problems they are facing. I don't care what brand names they're from, where they're based; they all have essentially similar problems.

One is encroachment, which Mr Colle talked a little bit about. We call that encroachment in the States. You talked about the doughnut franchise. We call it cannibalization with some chains because there is such a proliferation of the same—there are eight doughnut shops. There's a proliferation of the shops. It is patently unfair and it is no deal that you get the first right of refusal to say, "I'll take that second or third one." Why would you want to do that? What franchisees will say to me, "Susan, either I do that, I take the second or third location, and cannibalize my own gross revenue and net revenue or they're going to put somebody else in there and they'll cannibalize my sales?"

Why would that be a benefit to the franchisor? It's quite simple. In franchising, the franchisor makes their money off the top. They are getting a percentage of the royalties, of the gross sales. Franchisees are worried about the bottom line. There's a distinct conflict of interest here. Now we're way beyond the pre-sale courtship of: "We're going to be a family. We're going to be a partnership." No, now we're into: "I want more money off the top and you're looking for more money off the bottom. I don't care. The contract says you're going to pay me my royalty fee whether I provide services to you and whether you make money or not."

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In the case of multiple units, I have a successful unit here. It took me two or three years to get to break-even. The franchisor knows when I'm getting to break-even. He knows when I'm really profitable, because the franchisor has my financial statements, and if he doesn't have my financial statements, he has my royalty reports. He knows what I'm paying off the top. The franchisor determines that that unit or that marketplace could certainly sustain another unit. If this unit is doing \$1 million and the second unit comes in and this unit does \$750,000, but this unit's doing \$750,000, the fran-

chisor is still making out because the franchisor's money is coming off the \$1.5 million gross, not the single \$1 million. Are you following me, there? All right. So that's the benefit to cannibalization, or encroachment, as we call it in the United States.

Sole-sourcing requirements is another problem. Many franchise systems require that franchisees purchase products solely from the franchisor or from the franchisor's designated suppliers. No allowance is given to purchase from alternative sources of supply, even if the franchisee can get a better deal. Initially, when you're a first-time investor, you're thinking: "This is kind of good. I won't have to worry about where I'm going to buy my products from. I've got enough to worry about. I'm opening the store. I've got the carpenters coming in. I have leasehold improvements. I've got to hire employees. So that's good, I'll buy from their suppliers." What you don't realize and you don't learn until way after the statutes of limitations are up and gone is that, guess what, you could buy the same products locally, the exact same quality locally, cheaper, but you've tied yourself into a 10-, 15- or 20-year contract saying you would always buy from the franchisor or from their designated suppliers. That's where a lot of problems start.

In the States, there are certain states—Indiana has had a prohibition against requiring franchisees to purchase from designated suppliers since 1985, and Iowa has had that prohibition since 1992. There is no mass exodus of franchisors running out of Indiana into Illinois, because we don't have that prohibition. There's no mass exodus of franchisors running out of Iowa into Nebraska or Minnesota. There's no evidence whatsoever that franchisors will not come to the province of Ontario if you dare put that kind of legislation in place. They just have no evidence. It will not happen. They want to sell franchises and they want their brand names out there.

Franchisors, when they talk about the sourcing of supply issue, say, "We must ensure the same level of product and service from all our outlets, so we have to have control over the products and services that the franchisees buy and then deliver to the consuming public." That's total baloney. They want to have control because that's where they get their kickbacks, their rebates, their commissions from, because they are extorting money often from the suppliers. They can set the characteristics and standards of the products or services that are delivered to the consuming public, but they should not have the right to restrain trade and to tell a local business owner they cannot buy from another local business owner, that they must buy from certain suppliers only. This protects consumers and the franchisees. The only thing the franchisors are trying to protect is the status quo. They're not interested in being pro-competitive. They're interested in protecting their exclusionary practices, which they have already written into the franchise documents, which Mr and Mrs Smith, who just got a severance amount of money, are not going to be thinking about when they're signing a 15-year contract to buy a franchise. They're thinking that the franchisor is

going to make their life easier as a first-time new business owner.

Other issues that are problems with current franchisees and how you have to attack them in disclosure—you'll get some ideas now of why I'm saying that Bill 33 doesn't go far enough—relative to encroachment: We've proposed this in the States to the Federal Trade Commission. They haven't bought it. We didn't think they would, which is why we are seeking legislative solutions in the States. But relative to encroachment, because most franchisors know when they are going to encroach, we have suggested that on the front cover page they list as a risk factor and make a statement something like the following: "It has been our practice in the past that after your unit has been opened two to three years"—you fill in the blank—"we will come in and put another unit so close to you that it may in fact diminish your growth and therefore your net revenue." That is true and complete disclosure, and you can imagine what the franchisor lawyers in the States are saying about that kind of disclosure.

Regarding the restrictions on sourcing of supplies and products, in the States many franchisors will say: "We have our approved vendor list but we have an approval process. If you find another local product, bring it to us and, as long as it has the same characteristics, we'll put it through the approval process and it will probably be approved." That's disclosed; that is put in the disclosure document. But they don't tell you that they've been known to take more than one or two years to approve a vendor. "We've been known to change the specifications so your vendor can't possibly create the proper specifications." We have suggested to the Federal Trade Commission: This is true disclosure. Put that in the disclosure documents.

Assistance from the franchisor: What they promise and what they deliver is often two different things. We have suggested that language in the disclosure documents ought to be required that says, "Your franchisor, regardless of what it has told you, reserves the right to receive whatever the percentage of royalty payment while providing you with absolutely no franchise services," because that is what often happens in the United States, and I would assume it happens here in Canada.

A big problem comes up—I don't know how mature the franchisees are in Canada and if they're coming up to the end of their contractual terms, because a franchise contract is for a specified period of time, 10, 15 or sometimes 20 years. When you are buying the franchise and you sign the contract, you say, "What happens at the end of my initial term?" and the franchisor sales representative says, "Don't worry, we'll renew you." What they don't tell you is that you're not going to be renewed on exactly the same contract. They say, "You will sign"—this is important: Today, when I'm buying the franchise, I am signing that when my initial term ends, I will sign the then current contract. As long as I'm not in default, I will be able to sign the then current contract. You don't know what that contract is going to be. The franchisor doesn't even know what that contract is going to be. The franchisor may have been acquired by somebody else by

sor may have been acquired by somebody else by that time and someone totally new will be writing the contract. So you are agreeing today to sign something 10 or 15 years hence that is a moving target.

This is when franchisees start to realize: "You know what? I don't get the feeling I'm owning my own business. This is more like renting an apartment, because at the end of my 10 or 15 years the landlord is going to put a new lease down in front of me and he is going to say, 'Press hard, there are three copies, if you want to continue as a—fill in the blank—franchisee.'"

We have suggested that the terms be called "rewrite, relicense." I'm going to get "rewritten" in the contract, and "relicensed." Someone who is a first-time investor doesn't understand what that means; again, it's an artful term: "Renew." We have suggested that in the disclosure documents it be written: "You do not own your own business. You are leasing the rights to sell our goods or services to the public under our trade name. At the end of your initial 10-year term, your current contract will expire or terminate. You will have the choice of signing a new contract with us at the time of expiration or termination. The new contract will be written by us, with no input from you, and will contain materially different financial and operational terms." That needs to be put in Bill 33 to warn people about what will happen at the end of the current term.

Part of the problem is, as was mentioned, the unilateral and arbitrary decisions that can be made by franchisors without the input of franchisees. There are a lot of things in the franchise contracts that franchisors have total discretion over. Initially, when you're buying a franchise, you're thinking: "That's great. I'm glad because I can't possibly know everything about business and that's why I'm buying a franchise. I'm investing a lot of money for someone to teach me to be an entrepreneur." Once you become an entrepreneur, you start realizing that the deal you signed was not so good.

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You have to understand that none of the franchisees in the States is trying to get out of their current contracts. They understand what they signed. The franchisees who are part of our organization are successful operators. The United States Congress is realizing that it is the most successful operators, from chain to chain and from coast to coast, who understand that rules of the game need to be put in place. Whatever legislation is enacted in the States will not apply to current contracts. It will apply to any contracts entered into, amended or extended/renewed after the effective date of the legislation. I wanted to make that important point.

We hear in the States, and you may hear it here, that the stories regarding problems with franchising are "merely anecdotal; they are not widespread; it's a few disgruntled people who couldn't run a business anyway; they're just whiny-butts; they don't know what they're talking about." Well, we surveyed our members, and I have a copy of the survey for each of you. Forty per cent of our members felt they had unsuccessful relationships

with their franchisors. Close to half of them, over 46%, felt that discounting and promotional activities forced on them by their franchisors had caused an average 10% decline in profits. A majority of them, almost 60%, felt they purchased goods and services from the franchisors that were inflated in price—going back to having to buy from approved suppliers. Two thirds, 68% of the franchisees, felt they were not getting full value from the advertising fees they paid to the franchisors. Sixty-one per cent felt that the support services were inadequate. Fifty-five per cent of the franchisees who responded to our survey said they would not advise others to join their franchise system currently. Forty per cent of them felt they had been encroached upon in some way and, of those, 90.5% felt their profits had suffered as a result. So the problems with franchising that we relate to you here and to the United States Congress are not anecdotal. They are widely documented.

Let me conclude. Why has franchising evolved to where legislation is necessary? Two reasons: When it started in the United States in the 1950s, it was often a handshake. It was a two- or three-page agreement, a pretty easy contractual relationship. But franchise agreements have evolved today to the point where, except for the provisions relating to the use of the trademark, the use of the proprietary information and payment of fees, almost every other provision has some element of controlling, trapping or defeating the franchisee.

Franchisees, you have to understand, are governed by these totally one-sided contracts that are drafted by the franchisors' attorneys. There is unequal bargaining power from the beginning. If somebody is inexperienced in business to begin with, and you have somebody who knows everything there is to know about the pizza, doughnut or hotel business, there is unequal bargaining power right from the beginning, and the franchisor has arbitrarily decided on the rules by which the two parties are going to conduct their business after they sign the contract. Those rules are incorporated into the franchise agreement, which the franchisor prepares unilaterally for the franchisee to sign. What is even worse is that franchisors justify their own abuses, post-sale, by claiming that pre-sale disclosure in these lengthy, unintelligible legal prospectuses makes any abusive trade practice they do after sale totally legal.

The second reason these abuses continue to occur is that there are no existing baseline standards of conduct for franchisors and franchisees to abide by after the sale. In addition to the duty of good faith, in the United States our franchisees are looking for a duty of due care, meaning that the franchisor must have the level of knowledge and skill they purport to have when they sell the franchise. They can buy that level of knowledge of skill or care from an outsider, a consultant, but they must disclose that they have purchased it from someone else, or they could disclaim that they have such level of skill or ability. But again, this goes to the point that when you buy a franchise you are told, "We have a proven business system." The implication is that you will be able to make

a living, not that you are going to be an indentured servant for a period of time.

Another duty we are looking for in the States is a limited fiduciary duty when the franchisor handles book-keeping or accounting and payroll functions for the franchisees. In a legal sense, a fiduciary duty is the highest standard of care. Your banker has a fiduciary duty with you, your lawyer has a fiduciary duty with you and, indeed, in the States, business partners have a fiduciary duty: If either party is going to take an action, they must do it with the highest standard of care for the other party. The current scheme in the US—the federal rule, which has been there since 1979, the state disclosure laws and the various state relationship laws—is just a hodgepodge which only goes to fuel, as someone has said here this morning, the lawyers' pension funds. They are the only ones who benefit from this entire mishmash. That's why members of both parties in the United States Congress are considering what's called House Bill 3308, which I thought was kind of interesting because you were considering Bill 33. It's called the Small Business Franchise Act in the States, and the absence of any kind of standards of conduct for a multi-billion-dollar industry, almost trillion-dollar industry, is becoming a big concern to the United States Congress.

Again, my summary remarks: Bill 33 by itself doesn't go far enough. Based on our experience, 30 years of disclosure alone is not good enough. You need an enforceable duty of good faith, and I think I've given you some ideas about what the state of the art might be right now. You certainly shouldn't enact something that the States did 30 years ago because you'll probably be where we are 30 years hence.

Thank you very much. I'm able to answer questions at this time.

The Acting Chair: Are there questions?

Mr Martin: I don't want to be one to hog the time here. Divvy it up and make sure everybody gets a chance.

The Acting Chair: We've got about 12 minutes for questions so I'm interested to know what interest there is.

Mr Martin: I really appreciate your taking the time out of what I know is a busy schedule to come and be with us today. Your presentation was very enlightening and challenging and thoughtful. You raised a number of issues that I think are important and that I didn't actually get time to raise in my own opening comments, that I just want to touch on very quickly.

First is the issue that many franchisees are first-time investors—maybe that will be a question for you—people who get a severance package. In Ontario today we have a lot of workplaces restructuring, so a lot of people are given severance packages and they are looking for someplace to invest it that will guarantee them some income and, hopefully, a pension. They're not experienced business folk, and so they probably stand to be victimized more than, say, somebody who has experience. Do you want to comment on that?

Ms Kezios: I agree with you. Unfortunately, those people when they have been victimized, as you put it, go

out of business, and they want nothing more than to leave their shameful franchise experience behind. Those are not often the kinds of people who will show up in these kinds of hearings to talk about it. They've gone on with their lives. What we're finding is that the successful operators are the ones who realize, when their contracts are coming up for renewal, that they don't want to not have a choice at that point. I agree with you that there are unsophisticated investors. If they read the disclosure document in the States, they don't understand what they've read. They take it to a lawyer—99% of the lawyers who are involved in franchising in the States are franchisor lawyers.

Most of the lawyers in the States do real estate law, they write the wills, and they do other kinds of business transactions. They'd look at the contract and say to this couple with the severance package: "Well, you know, I wouldn't sign it. This is a contract of adhesion." Other lawyers call franchise contracts in the States contracts of adhesion. You're tied to these terms. I think Mr Colle brought it up that, what do you do? Ensure that these men and women have a lawyer read the document? Often-times the lawyer doesn't know enough about franchise law. The lawyer is not where I see the franchise lawyers teaching each other to write these documents. In the States, it's the American Bar Association that's the forum on franchising. The first time I went, I was appalled. I said to myself, Mr and Mrs Smith don't have a chance, because the lawyers were teaching each other how to avoid making certain disclosures and how to get around whatever the current disclosure or relationship laws happen to be, so that this unsophisticated buyer—

Mr Martin: It seems to me then, in a jurisdiction such as ours where there is a lot of shifting and restructuring, we as government have a responsibility to make sure that it's fair at least, if nothing else.

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You also talked about an issue that I hope we'll all look at, which is the issue of sole-sourcing of product and how that's a huge bone of contention and concern. In my own community we have a number of local, small producers who can't get their product onto the shelves of some of the bigger grocery chains because the shelf space is sold someplace else. Many of them are basically being put out of business. They get into business because they love doing what they do. They're good at it, as I said before. They invest the money and they do the work. At the end of the day, through no fault of their own but simply because they can't access the shelf space, they can't sell their product. I know that plays out negatively for the franchisee who might see that as an opportunity for them to make some money and also participate in the local economy that they need to keep healthy if they're going to succeed.

I have a number of pieces of research that I have done on the whole sole-sourcing issue because it affects my local area so much. How big an issue is that in the US and what do you suggest re our legislation here?

Ms Kezios: It is a big problem in the US. Encroachment is probably the number one problem, but sourcing seems to be another. I will tell you something: Franchisees in the US have sued for the right to buy supplies from their own suppliers since the mid-1970s. The Dunkin' Donuts franchisees in 1971 sued for the right to buy from their own suppliers. They won that right in 1971, but every year since then there is some other chain in the States that is suing for the very same right, which is the problem if you have no ability to buy locally.

The fact that you cannot buy locally and that you cannot buy the same quality of product or service at a competitive price leaves your gross margins totally in the hands of the franchisors, and that is a big problem following closely behind encroachment in the States. Many of the franchisees are mature chains. They've been around 25 or 30 years in the States, and these franchisees are putting together their own purchasing co-operatives and they're doing their own buying of products. I don't know the situation enough in your particular area to understand or even comment appropriately on how those franchisees might deal with that situation.

Mr Ted Chudleigh (Halton): Thank you very much for joining us today. I think you mentioned that there are 14 states with legislation. Does the legislation in any of those states deal with the lease, as to whether it's appropriate for the franchisee to be the holder of the lease or anything that prevents the franchisor from holding the lease?

Ms Kezios: I don't believe so—that prevents the franchisor from holding the lease? No. McDonald's is in the real estate business all over the world. Subway holds the leases. Subway does that for a variety of reasons; one is that it's easier to evict a franchisee than to terminate their contract. There's nothing prohibiting that in the States. Is that a concern here?

Mr Chudleigh: It is for me. A lot of the problems that I've run into with franchisors are based on the fact that they are the leaseholder, and it makes the franchisee very much more of a pawn in the process.

Ms Kezios: Absolutely.

Mr Chudleigh: They lack total control when that happens. To your knowledge, that hasn't been talked about in legislation?

Ms Kezios: No, not to legislate in the States. It's not being considered in Bill 3308 pending now.

Mr Steve Gilchrist (Scarborough East): Thank you very much for your presentation. It's very informative. As somebody who spent 25 years in a franchise that did in fact start with that one-page contract and a handshake and is one of Canada's more successful franchises, I certainly have seen the evolution that you talked about, where now it's far more legalese and less trust that seems to be embodied in many of these agreements.

We have tended to follow a path these last four years of less overt regulation and greater support for the private sector, and that really is at the heart of the full disclosure. Would you agree with me that if in fact, as outrageous as

you may have been in trying to craft those phrases for possible inclusion in a contract—the upfront notice, for example, that at the end of your first term you have absolutely no say and no control on any renewal terms—if that were done, if that were part of the full disclosure that we're talking about, because we've said "all material facts," would you agree with us that there's no need to go further in legislation?

Ms Kezios: No. But if you're going to do disclosure, you have to—

Mr Gilchrist: No, you don't agree, or no, there's no further need for legislation?

Ms Kezios: You need to go further.

Mr Gilchrist: Why is that?

Ms Kezios: First of all on disclosure, I wish we could throw the entire prospectus out in the States for the reasons that you and I have already cited. If you're going to have disclosure, you have to use some of those outrageous statements that I am making because that's the only way a layperson will understand what is happening. These are not lawyers who are buying these franchises.

But post-sale, what is the problem with having a duty of good faith imposed on both parties? In the States our duty of good faith is going to be reciprocal. Neither party to the franchise can do anything that would deprive the other party of the expected benefits of the contract. What is wrong with that? Why wouldn't franchisors and why wouldn't the government be willing to put that in there and maybe run the unethical performers out of business? What's wrong with it? Who is against a duty of good faith?

Mr Gilchrist: I guess, without going down that road, you raised the issue of full disclosure and how that was somewhat suspect in many of the prospectuses. If it were in plain English, if there really were an opportunity, before you'd written a cheque, to know absolutely everything that possibly could happen to you down the road, every business practice of the franchisor, where's the role of the due diligence that the purchaser is supposed to be putting in, if it were crafted in plain language and all material facts were disclosed? Would you not agree with me that that's the very fundamental of contract law, that each party has a responsibility to at least be aware of what they're getting into?

Ms Kezios: Yes, but no lawyer can write in plain English, so let's just start with that.

Mr Gilchrist: I wouldn't disagree, and maybe that's where government has a role, then.

Ms Kezios: Plain English to a lawyer is something totally different than plain English to Susan. All right?

Mr Gilchrist: Fair enough.

Ms Kezios: So that's how I would answer you.

Mr Gilchrist: Thank you.

The Acting Chair: To Mike Colle for four minutes, please.

Mr Colle: If they wrote in plain English, they wouldn't have as much work, so I think that's why they don't write in plain English. Obviously it's employment opportunities.

The question I have is that if you need these protections post-sale—and I think that's basically what you're saying, that whatever you put in up front is almost meaningless, it seems; in other words, that full disclosure doesn't really amount to much—what do we need in the post-sale provisions that would offer some protections?

Ms Kezios: You need an enforceable duty of good faith and perhaps one that's reciprocal. You need duty of due care, that I've mentioned, perhaps even as limited fiduciary duty. A number of the issues—and I've looked at Bill 35, which seems to be going towards the way of our HR3308 in the States—those are all relationship issues: what happens after the sale, the sourcing of supply issue, the encroachment. If they're going to encroach, if they're going to take away some of your gross and therefore net revenue, they should make reparations to you. That's what a business partner would do if you harmed the other partner. That's common sense to a layperson. So you can put something relative to encroachment, proximity, after. There's a whole laundry list of issues.

The Acting Chair: This will be the final question.

Mr Colle: Essentially you see this bill that you've looked at as not the solution. It's going to be basically further litigation, no protection really in place, so you don't see this bill in any way, shape or form as solving anything?

Ms Kezios: No. You will still have the majority of the problems that current franchisees are experiencing.

The Acting Chair: Thank you for your presentation. Safe trip home.

Ms Kezios: Thank you, especially with all the franchisors out there, right?

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JOHN SOTOS

The Acting Chair: I'd like to call our next expert witness, Mr John Sotos.

Mr John Sotos: Good morning. Mr Chair, honourable members, ladies and gentlemen, I have prepared a written submission, which is with the clerk. I don't intend to read the submission. It's more for background to provide information as to how the industry got to where it is today. I'll make short references to it as I'm going along where appropriate.

I'm a lawyer in private practice and I've been practising since 1980. My involvement in franchising dates back to that date. I am a partner at a boutique law firm, Sotos Associates, and my firm does franchise work almost exclusively, representing franchisors, franchisees and many of the franchisee associations that exist all across the country.

The nexus of what might otherwise appear to be a conflicting client base is our belief, which is shared by our clients, that successful franchising must be a win-win proposition for both the franchisor and the franchisee.

In my opinion, it's a mistake to polarize the franchisor-franchisee relationship, the us-and-them situation that

is occurring. Unfortunately, that's exactly what is happening. It has been happening in franchising in this province for the last couple of decades, and since everybody is taking cracks at lawyers, I will as well. It's largely because lawyers tend to draft very unfair, very onerous, one-sided franchise agreements.

When I went to law school I learned that you listen to your client, you understand what the deal is and you reflect the deal accurately in the franchise agreement. If you read franchise agreements today, in many cases you would think that the franchisor is suffering from cognitive dissonance, because the franchisor says one thing and the agreement contradicts it in every respect or in most major respects. I submit to you that's a root problem in franchising today.

As part of my practice, I have in the past and I continue to actively manage a wide range of litigation for both franchisors and franchisees. We've also been involved in some of the precedent-setting litigation in this province that has obviously brought some of the franchise issues to the fore.

My submission to you is shaped by my experience. I hope that the often harsh reality has not impeded my ability to provide a balanced view to this inquiry. I might add that I'm a strong proponent of fair and ethical franchising. I believe that properly structured franchising provides a template permitting ordinary people to achieve extraordinary success. At the same time, the lack of minimum standards of conduct results in untold and totally unnecessary economic as well as social loss.

Because of, or despite, my views I was invited six or seven years ago to sit on the Franchise Sector Working Team, which is an initiative by this very ministry to bring players representing various sectors of franchising together to seek some consensus on the formal regulation of franchising. I cover that experience more directly in my submission. I won't refer to it here. I will try to limit my remarks to no more than 20 minutes, so that way there is an opportunity for questions.

As a long-time proponent of the need for responsible regulation, I applaud the government's initiative in introducing Bill 33, which is a piece of legislation that may have enjoyed the longest gestation period in history, going back to the Grange report of 1971. I hope the work that these deliberations will result in will do justice to that gestation period. I also understand that some minor amendments will be brought forward. We've discussed them with the ministry and I'm supportive of those amendments as well.

I view the purpose of my testimony here today as helpful or as an attempt to assist the committee in improving the draft legislation that's currently before us. If I focus my comments on suggested changes and the reasons why, that's not to take anything away from my support for the bill, which I think is long overdue and would certainly do a great deal to protect franchisees who are newly purchasing franchises.

The problems facing franchising, however, are not all pre-sale, as you heard from the previous speaker. You

have the problems that arise before the contract is signed and the problems that arise after the contract is executed. Maybe I can take an opportunity to add my comments to the question Mr Gilchrist asked earlier of the previous speaker. The answer to the question of whether disclosure alone will do the trick to protect the marketplace is negative because, before you enter the franchise relationship and you get the full disclosure, what is disclosed to you may be absolutely truthful, accurate and correct; it's what happens after the franchise agreement has been entered into—the franchisor changes, somebody else acquires the company that you currently run, or the franchisor changes direction for whatever reasons. It's those changes that are implemented and cannot be foreseen. If you ask the franchisor at the point you're getting the disclosure as to what their intended conduct is going to be with respect to encroachment, for example, you may get a very clear answer: "We do not encroach." However, the agreement will provide for just that right. Five or 10 years down the road or three years later, if somebody else acquires the franchisor, they may very well do that. The contract provides for it and disclosure cannot protect a franchisee from prospective conduct.

The second reason there can't be protection in the disclosure document is precisely because of the kind of contract franchise agreements are. They are contracts that leave a lot of discretion—and I'll talk about that a little bit later in my presentation—to the franchisor to do all kinds of things to manage the system. So even though he may be selling widget A today, in three or five years he may be selling widget B or something else or even a different line of products, which may have different margins, which may have different labour requirements, space requirements and so on. So these are the kinds of things that cannot be predicted and disclosure cannot address. If it's helpful, that's my take on the question that was asked previously.

Coming back to Bill 33 and what it provides for, which is primarily for advanced pre-sale disclosure, I think the pre-sale disclosure provisions in the bill will go a long way towards addressing the major problems stemming from matters that arise before the execution of the franchise agreement. Misleading or fraudulent claims in order to induce the making of a contract should be significantly reduced if not eliminated following the enactment of this piece of legislation.

Similarly, the practice of collecting fees or even payments for the construction of a store that is never delivered or is delivered mortgaged or partly built will also likely diminish with the passage of this bill; if it doesn't, and if some franchisors don't temper their conduct accordingly, the bill provides, as Mr Hoffman indicated, some fairly effective remedies. Rescission is a fairly significant right that the bill bestows on franchisees who are basically defrauded. So that's a significant move in the right direction.

Similarly, Bill 33 introduces a statutory right for franchisees to associate without interference from the franchisor. Should franchisors interfere with this right,

Bill 33 provides a reasonable remedy to deter such conduct. The right to associate freely is expected to provide franchisees with the ability to legally meet and exchange information, particularly at times of crisis.

The right to associate offers franchisees a cost-effective way to deal with problems, to commission reports no individual franchisee could afford, to retain counsel collectively to advise them, again things that, especially for some of the smaller systems, it would be prohibitive for individual franchisees to do.

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I know that some of our friends in the grocery industry, the car industry or some of the larger franchises may have the means and the ability to individually do all these things, but for the vast majority of franchisees in the smaller systems this is a very significant right, and again I applaud the inclusion of this provision in the draft legislation. I caution, however, that the right to associate should not be seen as the total solution to the problems which arise after the franchise agreement is entered into.

The overwhelming problems in franchising occur, as you've heard previously, after the signing of the contract, and as long ago as 1971 were identified in the Grange report as follows: arbitrary termination of the franchise—that's still going on today; arbitrary refusal of assignments or renewals of the franchise—that's there today; arbitrary refusal of permission to dispose of a franchise upon death or incapacity of the franchisee—the same; the obligation to purchase materials or other products for the operation of the business from a particular source and without an obligation that it be done so on a competitive basis. I would say that's probably the number one problem in Ontario today. In the US, it seems that encroachment has taken that honour, but my experience tells me in Ontario that's still the number one problem.

Also, arbitrary forfeiture of deposits and fees: I can't tell you how many times people have come in and they've paid \$25,000 or \$50,000, and the franchisor is nowhere to be found.

Competitive practices of a franchisor are detrimental to the welfare of a franchisee. This is encroachment. Encroachment, I would say, is probably the number two problem facing the franchise industry, particularly in the mature industries such as the grocery sector and the car industry, where you're having consolidations, you're having a reduction of the number of—in the car industry, at least—dealer points, as they call it. In the grocery industry, you have competition of two sorts: You have franchisors supplying—with the consolidation, especially in eastern Canada, of two major players, you have basically the appearance of competition, but four, five or six brands are really owned by one supplier. I'll talk about some of the problems that raises in a bit.

I'll also give you a bit of my experience, some of the other problems not in the Grange report that I've seen in my career.

There was a coffee shop franchisor which required its franchisees to source all the products from the franchisor,

particularly coffee, and in a coffee shop you would assume that's a major part of the business, and it was. This particular franchisor viewed this tying of supplies as a particularly great way to raise money for itself and in addition to the royalties charged the franchisees 60% more than competitors charged for the same product to their stores, which led to the absurd result that the higher the sales the store achieved, the more money it lost. That franchisor didn't survive for a long period of time, but in the four or five years that they were kicking around, they probably sold, in total, 150-plus franchises with a total investment probably in the \$150,000 to \$200,000 range. The whole thing was basically an outright scam.

I've seen a franchisor whose system was set up to fail. Their business was to be reselling stores and keep getting the upfront fees as well as the resale value. One store was sold four times in 18 months with of course no disclosure of the prior history of that particular location.

Some of these issues would be captured and addressed by the disclosure provisions of the new bill.

We've seen franchisors using the advertising funds contributed by the franchisees to acquire terminated franchisees. So the franchisor used the advertising funds to acquire terminated franchisees, but when they re-sold them, the funds went not to the advertising fund but to the franchisor's coffers.

We've seen advertising funds misused in many ways. I wouldn't describe it as the number one problem but it's certainly one that is quite prevalent. Franchisors use the advertising fund for personal entertainment or vehicles, or they charge a disproportionate amount of operating overhead to the advertising fund. The advertising fund may occupy 1,000 square feet of a franchisor's space but they pay 60% of the rent, those types of things.

We've seen companies purchase a franchisor company for the purpose of eliminating competition. They cut off all services but they continue to collect royalties. They sell defective supplies; it puts franchisees out of business very quickly with no compensation.

We've seen a franchisor selling a single product—two franchisees developing a franchise system—and two years later deciding that there's more money to be made in the wholesale distribution of this product. They started distributing it through other channels of distribution at a retail price cheaper than franchisees can buy it wholesale. You can predict what has happened to that franchise system.

We've seen a franchisor whose system included the sale of basically a single product collecting money from franchisees for the purchase of the product. He used it for other corporate purposes. He didn't pay the suppliers. That supply of product dried up; stores had nothing to sell. In that system, more than 150 franchisees lost hundreds of thousands of dollars. Franchisors that sell to corporate or competing stores at lower prices than they sell to franchisees is a huge problem today, closely tied to the supply issue.

I won't bore you with any more examples. The list can go on forever.

These practices have been engaged in not only by small, home-grown franchise systems but by national as well as global companies, and that's important. It's important in that it's not true that, if you manage or you regulate the bottom-feeders for the smaller players in the industry, you're going to eliminate the problems. The problem is prevalent at all levels, and that has to be understood. I'm a bit concerned when I hear about exemptions for this, that and the other thing. Being large doesn't necessarily mean that one is operating any more ethically than somebody who is not so large.

Part of the reason why post-sale conduct cannot be captured by advance disclosure is because of the kind of permissive language that's contained in the franchise agreements. I'll give you a very brief definition of what a franchise program is, and you can name the franchisor that has this language, but it's fairly generic.

"Franchise program" is defined to include anything and everything prepared by or on behalf of the franchisor that is designed for the franchise program, as may be added to, changed, modified, withdrawn or otherwise revised by the franchisor in its sole discretion from time to time...

"The franchise agreement may be terminated immediately upon written notice having been provided to the franchisee, if the franchisee does not comply with any standard (objective or subjective) established by the franchisor if such breach is not cured to the subjective satisfaction of the franchisor." This agreement is basically terminable at will.

The question legitimately arises, why would anybody sign such an agreement? I'll tell you why people sign those agreements: because in many cases they've had long-standing relationships with their franchisors, going back decades. They trust. They don't look at these agreements with the belief that anybody would enforce these kinds of provisions, but they are being enforced. They're drafted, put in place, and they're being enforced.

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There are other agreements which provide that the franchisee can have his agreement terminated if the franchisee receives any publicity passively. If the franchisor receives any publicity that the franchisor in their subjective judgment deems to be unfavourable, then the franchisee can be terminated.

Franchisors have the right to change your trademark. You've been ABC franchise for 35 years and all of a sudden you're going to become XYZ franchise. You have no choice. The goodwill that you've built up may dissipate or disappear, but you're at the mercy of the franchisor in that particular case.

The need to have flexible rights to change the system is not questioned—it's necessary—but that flexibility, that discretion, has to be tempered so that you have equitable results, the results that the parties expected at the time they entered into that contract.

I'll just give you another example to show you how absurd some of these agreements are. One agreement provides that the royalty and other fees are fixed for a

very short period of time and can be unilaterally changed by the franchisor thereafter, from year to year, at their discretion—different fees for different stores even, under the same banner. These provisions are excessive, and this is where I take issue with some of my colleagues.

Bill 33 provides for a duty of fair dealing in the performance and enforcement of the franchise agreement. It does not, however, define “fair dealing” nor does it provide for any remedy other than the generic common law. Fair dealing in common law doesn’t really mean very much. It’s such a high standard. It’s the unconscionable standard. You’d have to be a fraudster who’s committing all kinds of fairly obvious sins in order to be caught by this kind of conduct.

In my respectful view, section 3 doesn’t really accomplish very much, and I think you run the risk of lulling people into a false sense of security. If the Legislature intends to give meaning and substance to section 3, it must define the duty of fair dealing and it must support its reach by some specified remedies.

Traditionally, fair dealing has been defined in one of two ways, either generally or specifically. An example of a general definition of fair dealing can be found in some of the American jurisdictions—Arkansas is an example—which basically makes it an offence for any franchisor to refuse to deal with the franchisee in a commercially reasonable manner and in good faith. A specific definition of fair dealing is what was in the Grange report back in 1971, where it stipulates that it is unfair conduct for a franchisor to terminate an agreement arbitrarily, to arbitrarily refuse to assign, to mandate the purchase of supplies from a single source without providing for competitive pricing. That’s a specific type of regulation. The Arkansas provision is a much more generic one. Australia has enacted some fairly franchise-specific legislation in the past couple of years, and they’ve adopted the specific form, the chapter and verse type of regulation.

For a whole host of reasons, I prefer the general approach to the definition of fair dealing as opposed to the very specific. I believe it would provide a small improvement to the bill without changing its overall character. Bill 33 already provides for a duty of fair dealing. My recommendation would be that the fair dealing provisions in section 3 be redrafted to say, “Fair dealing means honesty in fact, and where the franchisor has the right to adversely affect the franchisee’s investment, he must exercise such right in a commercially reasonable manner,” and, “If the franchise or its associate breaches this section, then the franchisee has a right of action for damages.”

I believe that a general definition of fair dealing that is statutorily enforceable provides a number of distinct advantages. First, it’s fair. This is what all franchisors say they do now in any event. Second, it establishes a standard that is less than the best practices standards established by industry leaders. I’ll read to you a couple of quotations from prominent brands that you would recognize. One is from the president of CARA, the fran-

chisor of Harvey’s and Swiss Chalet. He has described successful franchising as “an equitable sharing of accountabilities, responsibilities, expectations and finances ... it boils down to an equitable outcome, a healthy balance, a win-win situation The most successful relationships are true partnerships We look at our franchisees as operating partners.”

Similarly, the CEO of McDonald’s US said, “We believe the fundamental premise for a successful franchise organization is partnership ... with shared vision, shared goals and shared responsibility.”

The good faith or fair dealing definition that I’m proposing doesn’t even reach that standard. A standard of commercial reasonableness is already embodied in other commercial legislation in this province and in other provinces in this country, so it’s nothing new. A defined and enforceable fair dealing standard requiring commercial reasonableness in the exercise of discretion would have the effect of imposing a level of inquiry and assessment of intended action which doesn’t exist now.

A sober second thought: If you’re going to send a notice of termination to a franchisee because the french fries were under the heating lamp 30 seconds longer than they should have been, well, you won’t be able to do that any more; you have to stop and think and say, “Is the action we’re contemplating appropriate in relationship to the offence that we’re trying to cure?”

A general definition of fairness as proposed would provide the necessary flexibility to deal with particular circumstances. When you provide specific fair dealing legislation, you more or less have to deal with everybody in the same way. When you say, “Thou shall not open another location” within a certain territory and you define the territory, that places the franchisor in a bit of a strait-jacket. If you’re talking—and I know my friends from Hortons are here—about Tim Hortons and you provide a three-mile radius in the legislation, they’ll have to close half their locations down. On the other hand, if you’re talking about a new franchise that’s just starting up, three miles may be a legitimate non-compete territory. So, if you’ve got a generic provision of fair dealing, you’re able to provide the parties with the flexibility, you’re going to deal with them as they are, as opposed to putting everybody in a straitjacket, which is very difficult to justify from an economic and business perspective.

There is no evidence that the existence of fair dealing legislation in a number of the US jurisdictions and Australia has impeded the growth of franchising. You’ll find as many franchise businesses in the regulated states as you will in the non-regulated states.

Finally, and this is very important, fair dealing will provide protection for probably the 30,000 to 40,000 franchisees that are already in locked relationships. Disclosure will help the—I don’t know how many—1,000 or 2,000 franchisees buying a franchise every year, but an enforceable, defined duty of fair dealing will help the 30,000 to 40,000 franchise relationships that are in place that can’t be changed.

You can give disclosure to a grocer and say, "From now on, your royalties are doubling" before they sign the new agreement on renewal, but what's he going to do with the \$3 million or \$4 million he has invested in his real estate? You've no choice. You provide no realistic option other than to sign, because a sunk investment has already been made. With a defined and enforceable duty of fair dealing, you'll offer protection to those people out there who will see nothing from the disclosure.

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In my view, Bill 33 is a good bill; it's much needed. But in taking the next step—it already speaks to fair dealing—define it, make it enforceable. I think it's going to improve the economic and business marketplace of Ontario as well as the life of franchisees, and franchisors, ultimately, in this province.

Those are all the remarks. I'd be pleased to entertain questions.

The Acting Chair: We have about five minutes for each party. To maintain the rotation established earlier, I'll give Tony the first shot at it.

Mr Martin: Thank you very much, Mr Sotos. I detected just a slight tinge of restraint in your suggestions and comments to us this morning. You speak of some small improvement to the bill. I'm reading into that that there is actually some significant improvement that could be done to the bill that would be even more helpful.

You're coming from the working group, and there was somewhat of a saw-off compromise that came out of it that the ministry picked up and has hobbled together re Bill 33. I wasn't part of the group. I would like to have been invited to be part of it, but I wasn't. The sense I had was that it was half franchisee, half franchisor, a little bit like putting together a group consisting of drunk drivers and Mothers Against Drunk Driving to come up with a resolution to the issue of drunk driving. I suggest that it wouldn't be a bill with much teeth if it was compromise you were looking for and that, to some degree, is what you have here. It's compromise, in my view, that leans heavily towards not making franchisors too upset in case some of them might leave or this might not be attractive.

I say this, Mr Sotos, in light of your very active and aggressive involvement with some of the franchisees who have been done wrong by across the province, the very excellent work you've done in some instances and some of the comments you've made over the last few years where franchising was concerned, even comments you made when we were government that were quite critical of us as not moving fast enough. At one point you mentioned in a Toronto Star article—it's in A-43 for anybody who is interested in looking at the comment in the package I gave you—"If we do not have something in 60 days we will never have it.... The industry needs attention yesterday." I read into that a sense of urgency. That was six years ago, and here we are still looking at this and still looking at a watered-down piece of legislation.

You also talked about the legislation in Alberta. In an article in the Financial Post—it's A-55, for anybody who's interested, in the package I gave you—you say,

"Alberta is basically what franchisees call the 10% approach...."

"Alberta's approach as it currently stands is going to assist only a small number of franchisees and resolve only a small number of problems because it only addresses (the issue of) disclosure...."

"The industry cannot manage itself, that is absolutely clear."

It's my view, and this is a bit out there I think, that it's better no legislation than legislation that presents to prospective franchisees or entrepreneurs in this province a sense of security that in fact isn't there.

You've I think taken a look at my bill, Bill 35, that I've tabled. What do we need to do to actually protect the industry and to do the kinds of things that are reflected in some of the previous comments you have made, and would the government's adopting all or part of Bill 35 do the trick?

Mr Sotos: Thank you, Mr Martin. I'll try to answer what I understood your question to be. In the recommendation that I'm making, I'm being sincere in stating that the inclusion of a defined and enforceable standard of fair dealing, in a generic way, will go a long way towards providing a level of protection that is not there today for existing franchisees, and in a way that is not as intrusive as some of the more specific legislation, as is found in Bill 35 and some of the other legislation in the US and Australia.

I say this for two reasons. This is my 21st year of practice in this area. I certainly have recognized the need for some regulation for probably 18 of those 21 years, and nothing has happened. I certainly have been advocating for it, based on my experiences, for a good 12 or 15 years, and this is the first concrete piece of legislation we have had before us. Clearly, I am cognizant of the interests—largely misguided, I think—that view any form of fairness regulation as negative and anti-business. I am not anti-business. My clients are all business people. I strongly support a healthy business marketplace. I view an enforceable general standard of fair dealing to be pro-business.

I concur with the previous speaker, who said that a fair dealing provision will significantly diminish litigation. But more importantly, it will diminish the incidence of expropriation without compensation, and that is important. For every case that makes it to court or a legal claim is filed, there are probably dozens that never go that far. From what I know and from my experiences, a general, enforceable standard of fair dealing, which is already in part provided for in the legislation—it says it wants that. I'm just saying, let's define it and let's make it properly enforceable. I believe that would certainly be adequate for the next while, if it were to be the committee's wish to recommend that to the Legislature.

The Acting Chair: Thank you. For the government party, I think the parliamentary secretary would like to lead.

Mr O'Toole: I refer to Mr Hoffman's opening remarks that we are using the same reference points in

the bill as the Alberta model. I wonder if you could comment specifically. On page 14 of your notes, you refer to a "commercially reasonable manner" as the definition of fair dealing. What precisely would be the difference? Once you get into defining something, you could get caught with, "We didn't go far enough." What's your intention here? You still have to define "commercially reasonable manner," or is that already established in case law?

Mr Sotos: There is already other legislation in this province that provides for a standard of commercial reasonableness. For example, under the Personal Property Security Act, if you seize somebody's assets and dispose of them, you have a duty to dispose of them in a commercially reasonable manner. You can't just sell them to your friend for 10 cents on the dollar or whatever. That's a defined and recognized standard.

The Acting Chair: Mr Gill.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): This morning we have heard a fair bit of gloom and doom, as if there are a lot of problems. I suppose there are. But at the same time, we understand that people are trying to follow the North American dream of having their own businesses. As I understand—correct me if I'm wrong—people are falling over each other trying to get good franchises.

With your 25 years' experience dealing in this business—I'm trying to compare the ratio of franchise-type business versus independent business. Ratio-wise, how many people fail in franchise businesses versus independent businesses—new start-ups?

Mr Sotos: Excuse me, Mr Gill. To my knowledge, there are no Canadian studies that actually document the area you have asked me about, but some studies have been done in the US and I understand some in the UK as well. The best evidence appears to be that franchise start-ups within five years have a higher failure rate than independent non-franchised business start-ups.

1150

This is in answer to the wrong perception the public has that buying a franchise business ensures a better rate of success. That is true if you're buying a franchise from a well-established, mature franchisor. For example, in that US study, they counted the franchisors that started business in 1983 until 1994, and in those 11 years there were something like—and I'm going from memory—1,200 franchisors who entered the marketplace in total; 850 of them had disappeared by the last year of the study. So franchisors fail as well as franchisees.

Mr Gill: But you don't have any comparison with independent business, how many of those failed within—

Mr Sotos: Of the studies that exist?

Mr Gill: Yes.

Mr Sotos: More franchisees fail than independent businesses during the first five years. That's the evidence that exists, but it's only American. There's nothing in Canada, to my knowledge.

Mr Gill: In your mind, is the reason that it is a matter of not enough due diligence or people's expectations being higher than what they really should be?

Mr Sotos: Why is the failure rate higher?

Mr Gill: Yes.

Mr Sotos: I think it is because the investment in a franchise is higher than the investment in an independent business. You've got more debt load to repay, because you have your initial franchise fees. You typically get a better store, a better office, a better business in the sense of what kind of equipment you get. Some franchisors charge markups on repairing the business for the franchisee. So your cost of getting a branded coffee shop, for example, might be materially greater than if you were starting your own independent shop. The costs are higher, therefore that would explain why the failure rate would be higher.

The Acting Chair: We've got about three minutes left. Are there any other questions?

Mr Chudleigh: Just a very short one. In your experience in the Ontario area, is there a particular area in which most of the problems reside, whether it be food-related, automobile, motel-hotel chains, or are the problems that franchisees have with franchisors or vice versa fairly well spread throughout?

Mr Sotos: I would say that they are well distributed. The mature systems, where there has been a lot of consolidation, are having a whole host of problems. Certainly the grocery industry, for example, is experiencing and has been experiencing a lot of difficulties for the last decade. You will recall the Loeb franchise situation.

Mr Chudleigh: Yes.

Mr Sotos: That's a case in point, and there are many others that are in the same situation.

Mr Chudleigh: Mostly involving around encroachment?

Mr Sotos: Not only encroachment; the sourcing of supplies and the price at which supplies are being provided, the requirement to invest in a store very substantial sums of money and then the franchisor coming in with the discount concept down the street or converting an existing to a discount and all of a sudden your business is taken away from you and the franchisor is making more money because they are selling more groceries, in this case. They're getting the profit from the product and they're also getting the royalties. So you are there with a sunk investment. Your sales are going away, and your margins are declining or disappearing. You've got this building you can't do anything else with, you owe the bank \$1 million and, you know, the usual, you've got employees who've been with you for 20 or 30 years and all those other issues. But those problems are everywhere—fast food. Hotels is probably the only area where I have not seen much disputation, if that helps.

The Acting Chair: For our last question, Mr Martin. A short one, please.

Mr Martin: Mr Sotos, I was listening to your answer on the question of survival patterns among franchise and

non-franchise firms. There is a study that has been done that I had research—Susan Swift—look at, and I have a paper that I'll make available to the committee. It's an article, *Survival Patterns Among Franchise and Non-franchise Firms* started in 1986 and 1987. Very briefly, it suggests: "Generally speaking, the results of the study contradict the assumption of relatively lower risks for franchisees when compared with independent small businesses. Measures of profitability and survival rates in this study support the opposite proposition, namely that franchisees are often at greater risk." I'll share that with you so you can have a look at it. Having said that, and the question I asked you earlier, better no legislation than legislation that misleads?

Mr Sotos: I'm sorry. What was the question?

Mr Martin: Would it be better to have no legislation than to put a piece of legislation in that gives people a false sense of security, given some of the statistics?

Mr Sotos: That obviously is a no-brainer. The purpose of legislation is remedial, it's to correct a problem. If the legislation doesn't achieve that, then I think it's misplaced.

Mr Martin: Without your amendment, Bill 33?

Mr Sotos: Bill 33 will address the issue of pre-sale disclosure relatively well. It will also address the right-to-associate issue quite well. So as far as those matters are concerned, I can't say that it's not helpful; it's doing that job. It's the fair dealing that I think needs to be enhanced a little bit in order to make this bill a very legitimate and helpful piece of legislation for an industry that apparently accounts for something like \$50 billion or \$90 billion in Ontario alone—I don't know the numbers. It's a significant industry.

The point I make in my submission is that there isn't an industry that, as it reaches a certain level of complexity and maturity, isn't specifically regulated. Franchising is there now and has been there for quite some time. I think the initiative that's before you, together with some slight enhancements—I know the ministry has some other small amendments that they wish to make as well just to pick up some issues—should make for a very helpful piece of legislation.

The Acting Chair: That concludes your appearance?

Mr Sotos: Yes.

The Acting Chair: Thank you very much for coming before the committee.

NED LEVITT

The Acting Chair: I'd like to call on the last presenter before lunch, Ned Levitt. Welcome to the committee, sir. You have 20 minutes.

Mr Ned Levitt: First of all, thank you very much to the committee for allowing me to come here and make a presentation this morning.

My name is Ned Levitt, and I'm a partner in the Toronto law firm of Levitt, Beber. I've been practising for 25 years in this area. During that time, I have acted for both franchisees and franchisors, essentially balanced

between the two. During that time, I have witnessed the amazing growth of franchising in Ontario in an unregulated environment. I have acted for many franchisees in dispute matters and organized many ad hoc franchisee associations to deal in troubled franchise systems. Currently I am general counsel to the Canadian Franchise Association, and I had the good fortune to be a member of the Franchise Sector Working Team, so I've had more than a little bit of input on Bill 33. Today I am appearing in my personal capacity and what I have to say are my personal views.

Bill 33 is a product of many hours of work and debate among various parties and from various perspectives. Certainly we debated the bill and initially our report at the Franchise Sector Working Team extensively. The bill does not contain everything everybody who is a member of the Franchise Sector Working Team wants to see and in fact it contains some things that members don't want to see, but it is acknowledged as a workable consensus among the various interests that were represented at the Franchise Sector Working Team.

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I believe that Bill 33 is long overdue and should not be delayed any more. I'm essentially in favour of Bill 33 as a disclosure document. I am open to suggestions of certain amendments and I will discuss in a moment some issues that I have.

You have heard this morning that there is a crisis in franchising. You've heard many stories about problems and abuses by franchisors. They are true. I could add to them. I could walk you down the halls in my office and show you filing cabinets dripping with blood from disputes. They exist. However, these are anecdotes.

I've struggled very hard with this. I hunger for good statistics about the franchise industry. Everybody does. I've heard this morning that there are two studies, one done in the media. I haven't seen studies like that before and I'm interested to look at that. I've been involved in a number of media stories and I know what goes on behind the writing of reports. I've also heard from Ms Kezios this morning that her organization has done a study and I'm very interested to see that one. Having hated statistics when I took it at university, I nonetheless survived and I know there are issues around studies, the questions you ask and how you compile and analyze the data. What we need for franchising, of course, is disinterested, third-party studies that we can all rely on to make our decisions.

I have been successful in obtaining remedies for franchisees individually and as groups, using the existing common law in Ontario. I've often done it quietly, found business solutions and done business negotiations as well as concluded litigation. I haven't been able to achieve a satisfactory result for every one of my clients. I wish I could have but I couldn't, for a variety of reasons. But I'm satisfied that there is a fair chance in this province for franchisees to receive justice. If the statistics show that we need stronger franchise legislation, relationship legislation, I'll be the first one screaming for it, I assure

you of that. Certainly, I have my eye on a chalet in Switzerland that I want to buy with the fees I'll be earning from the added litigation.

But seriously, I've again had to struggle with, do I want to see it now in Ontario? I've come to the conclusion that no, I want to see a bill that does what Bill 33 does, essentially, to provide disclosure, which will allow franchisees to make an informed decision before they invest their dollars.

What about the franchise community? There's a lot of rhetoric floating around, and rhetoric bothers me. I like reasoned arguments and I like facts to support assertions. Perhaps I can help the committee understand a little bit more about franchising. First of all, franchise fraud in this province is not our biggest problem in franchising. In fact, out and out frauds are a very small percentage of the problems that I've seen in 25 years. Franchise negligence is a much bigger problem. Franchisors starting franchise systems without the right resources, knowledge, experience and commitment to make a success of it are the ones who create the vast majority of the problems. I was interested to hear Ms Kezios this morning talk about her proposal that there be a duty of competence in a piece of legislation. I'm not sure about that.

I also want to tell you that everybody tries to paint franchising with a broad brush, but it is very multifaceted. Franchisors come in all shapes and sizes. When you're talking about large, well-established franchisors, they want to see a healthy, fair, honest franchise market as much as anyone else. I think you'd be hearing a hue and cry from the larger franchisors if there was a serious problem of abuse and a crisis in franchising.

We've matured a lot in these last 25 years of franchising. That has brought with it a much greater understanding of franchising among franchisors, those who advise franchisors and those who advise franchisees. There are many more lawyers today than was the case when I started in the area who understand franchising both from the legal as well as the business point of view, because often the lawyer and/or the accountant are the professionals franchisees seek initially, not just for their professional advice but for their business judgment. There's also the growth of the Canadian Franchise Association in its influence and its efforts to educate not only franchisors about how to franchise better, but to educate franchisees about how to make a better investment decision.

I would like now to make a couple of comments about specific issues on the draft bill. It has been argued that there isn't a mechanism for dispute resolution, and I'm a very big proponent of mediation in franchising. For me, arbitration is just another court. It cannot necessarily deliver the cost-effective results that franchisees who have difficulties are seeking. It can be as expensive and as lengthy as court proceedings, and I think everyone who knows agrees that it is really mediation that is the preferred ADR form for franchising. But we now in Ontario have court-annexed mediation which will capture all disputes, including franchise disputes. As well, we

have many more initiatives, both driven by the Canadian Franchise Association and from other quarters, to increase the amount of mediation that goes on in franchising. For mediation to be successful, the parties have to want to do it. They have to approach that process on a voluntary basis. I can't, for myself, imagine that you can legislate someone to work co-operatively in a mediation.

It has been talked about for industry self-management. Again, this is relationship legislation—not that I'm against relationship legislation; I'd need to know more before I could support relationship legislation.

I have some difficulty with one definition in the act, and that is the definition of the franchisor's associate. In extreme examples, that could create liability for a shareholder, albeit a controlling shareholder, of a franchisor, and I think that's just about unprecedented in our judicial system where shareholders can be liable for the acts of their company.

A small matter, but the inability of a franchisor to take a fully refundable deposit, which is permissible in Alberta, denies franchisors an opportunity which I believe they use often and appropriately to take a fully refundable deposit in the process of selling their franchise.

One comment about the financial disclosure: Providing franchisees with full financial statements may not be as effective as providing franchisees with specific financial information certified to be true by a franchisor. Certainly, franchisees can take financial statements to accountants and have them analyzed but, unfortunately, a lot don't do that. For them, it is basically language they don't understand.

In conclusion, and then I'll take questions, Bill 33 represents a huge change in the franchise marketplace in Ontario but a necessary one. If we go further with stringent relationship provisions before we let the new act have an effect on the marketplace, and before we gather a more accurate picture of the true extent of problems in franchising generally, we will be making a mistake. Franchising is an integral part of Ontario's commerce today. It provides opportunities to many, and we should not run the risk of stifling its growth with unnecessarily restrictive legislation. Thank you very much.

The Acting Chair: We have six or seven minutes for questions. Is there interest in questions?

Mr O'Toole: Thank you very much, Mr Levitt. I appreciate your presentation here this morning. Just a couple of clarification points, if you will, as I gather that being part of the working group, you're supportive of the need for legislation?

Mr Levitt: Absolutely, yes.

Mr O'Toole: With that, I suppose you're supporting, and I'm just trying to pick up on one piece, the disclosure piece which of course is a central piece to the bill as I see it. I'm just wondering how you deal with things like a substantive change. I of course don't know anything more than the paper I've been given to read about it, but I think of someone in a business that is, in a technology sense, changing dramatically. This is something I was

thinking as you were presenting here. Take a photo business, where the whole technology is changing. So I've got a disclosure statement that tells me some things about running this, and I've got financial statements about how much business I'll probably do, and all of a sudden we have a market that changes because of digital technology and people don't use the typical. Don't you think I'd be tying a franchisor, perhaps unnecessarily, to a conditional arrangement where they weren't able to adapt their business plans to reflect the changing needs in the marketplace? Do you understand? The whole thing could change. The recipe for success could change, so the franchisor—how do you think these disclosure documents will tie? Both parties have a responsibility to prepare for those kinds of change I've just described.

Mr Levitt: We can't eliminate risk in business.

Mr O'Toole: That's right.

Mr Levitt: Franchisors cannot eliminate risk for franchisees, and one of the risks that everyone takes in the piece is something that changes the market as a whole, such as technology. I'm starting to see now the emergence of franchises in dealing with Internet businesses. They scare me greatly. It's changing so rapidly. How can anyone be selling something that says there's a proven formula here when the formula's maybe a day or two old? There are industries that are changing more rapidly than others.

Mr O'Toole: It's the whole fair dealing debate, not just disclosure. But who's to say who is responsible for adapting to the market?

Mr Levitt: Again, we come back to the fact that the franchisor is selling something. They're representing that they have a level of knowledge or something about their industry that has to be true. That's why I emphasize so much the disclosure, and I want it to be a full and comprehensive disclosure that brings these risks to the attention of the investor. If the franchisee investor can't comprehend them, then hopefully they'll find their way to professionals who will help them comprehend and understand that before they make the decision.

Mr O'Toole: If I have time for one more—

The Acting Chair: You have time for one very brief question.

Mr O'Toole: In some respects I sort of picked up that less is a better approach. I'm not summarizing what you said, but I gather less intrusion is better than intrusion. I think Mr Martin was always asking the question, is it better to do nothing than do this?

Mr Levitt: Unfortunately, we talk about the unethical franchisor, but believe it or not, there is the concept of an unethical franchisee. Lots of franchisors have problems with franchisees, but I have no grasp on the extent of the problem. No, I am for full-blown relationship legislation when the case can be made out that we need it. If we start having that type of legislation before it's proven that we have the need, I think we're making a mistake.

Honestly, from my perspective, I don't think we need it in Ontario right now, but I don't know. I sit in my ivory tower doing what I do every day, and I deal with this all

the time, but I don't take surveys; I don't cover the entire ground. I have difficulty when people say in a forum like this or any other forum that they have the Holy Grail, that they have the statistics, when, to my satisfaction, the studies have not been done. But if it's proven, I want to see tougher legislation.

Mr Martin: I find it interesting that you're coming today, supporting disclosure legislation as being enough. In an article in the Report on Business in December 1998 you're quoted as saying that in fact a good salesperson can sell around a disclosure document. How do you reconcile those two realities?

Mr Levitt: Having put myself through school direct-selling, I know how that's possible, that you can sell around it, but it doesn't—

Mr Martin: How do you protect anybody then?

Mr Levitt: No, no, no, but it doesn't change the liability for the parties in the piece, and that's what disclosure legislation really does. When a franchisee comes into my office and they've got a disclosure document that said one thing and then the conduct of the franchisor was another, whether the salesman sold around it or not, I'm going to have something to base my strategy and my case on. In fact, the franchisee certainly had the ability to come to someone like myself ahead of time so that I could question what the salesman is doing in selling around the disclosure document.

The Acting Chair: We have about one minute, if there are any final questions. Seeing none, we will recess until 1:10.

I'd like to remind particularly members of the committee who are leaving after this afternoon's session for Sault Ste Marie that we're going to need to run crisply and that if you have your luggage packed, it will be helpful if you could bring that with you.

Mr Martin: Just on a point of order to say that I've been talking about a number of pieces of research that I had done in preparation for these hearings. I will at the noon hour try to distribute those and leave any extra copies of that that I have on the table over there so that if you want to access them, they will be there for you so you can have a look at them.

The Acting Chair: Thank you. We're in recess till 1:10.

The committee recessed from 1215 to 1310.

The Acting Chair: We will get rolling again. I'd like to thank everybody for coming back pretty close to the appointed hour. Just a reminder that many members of the committee will be travelling after the hearing this afternoon so we need to keep things moving as quickly as we can.

CANADIAN COUNCIL OF GROCERY DISTRIBUTORS

The Acting Chair: I'd like to present the next group, the Canadian Council of Grocery Distributors. You have 20 minutes, and I'd ask you to introduce yourselves individually.

Mr David Wilkes: Thank you very much, Mr Chairperson, and members of the committee. I apologize; I have a cold. This is not my regular voice.

My name is Dave Wilkes, and I'm the vice-president of the Ontario region and trade relations with the Canadian Council of Grocery Distributors, or CCGD. I'm joined today by Kevin Ryan, who is an executive vice-president and a representative of one of our member companies, and who has worked with the franchise working committee; as well as Justin Sherwood, who is a director of our association.

The Canadian Council of Grocery Distributors is a not-for-profit national trade association representing the food distribution industry across Canada. Among its members are small and large grocery wholesalers and retail operations. The council's membership represents approximately 85% of the \$54 billion of total sales volume of grocery products distributed in Canada. In Ontario, our distributors are responsible for in excess of \$19 billion in grocery sales and employment of over 150,000 individuals.

We provided the clerk of the committee with a summary of our members and some of the activities that they undertake. As well, we provided the clerk with a summary of the opening comments that Justin is going to offer that provide our perspective on the bill that we have before us today.

In Ontario, CCGD represents A&P/Dominion, ADL, Canada Safeway, Knob Hill Farms, Lanzarotta Wholesale Grocers, Loblaw Company Ltd, Metro Inc, Sobeys and subsidiaries of all those various companies.

What we'd like to do, if it serves the pleasure of the committee, is ask Mr Sherwood to outline our position and then allow Mr Ryan to provide a member's perspective and his perspective on the bill that we have before us. If that suits your purposes, we'd like to proceed.

Mr Justin Sherwood: The Canadian Council of Grocery Distributors supports Bill 33 as a positive step in protecting the rights of franchisees.

When reviewing the proposed franchise legislation, CCGD would like to impress upon the committee the significant differences that exist within franchise operations. While some franchise operations are small, require small capital investments and employ only two or three people, others are large, employ as many as 200 or 300 employees and require extensive capital investments.

In the case of the grocery industry, the latter is the case, with typical grocery franchise arrangements where a franchisor can investment up to several million dollars in building or renovating a retail location that will employ several hundred people, with the franchisee investing a relatively low percentage to enter into a franchise agreement to operate that location. At present, our members have over 690 franchise locations in Ontario, which employ approximately 50,000 employees in full- and part-time employment. This does not include the secondary employment that is generated by these locations. This represents a considerable capital investment in

franchising as a mode of operation for CCGD members and has a significant impact on the Ontario economy.

CCGD and its membership provided input to the franchise sector working group through the participation of Kevin Ryan, who joins us today and will be providing his perspective after my comments.

CCGD believes that Bill 33 will provide much-needed clarity to franchise arrangements and supports the bill for the following reasons:

The Franchise Sector Working Team, composed of large and small franchisors and franchisees, provided detailed industry input into Bill 33. This committee participated in hearings, reviewed legislation and provided consultation to the government during the development of Bill 33. While the result does not reflect all the wishes of every member of the franchise sector working group, the proposed legislation represents a compromise position of all stakeholders. The proposed legislation strikes a balance between protecting prospective franchisees without creating an environment burdened with red tape, which would negatively impact the existing franchise relationships. Should franchise legislation be made too cumbersome and onerous, companies that presently use franchising as a means of operation may shift their priorities to operation of corporate stores, negatively impacting the existing system and its participants.

Since CCGD members operate in more than one provincial jurisdiction, consistency in legislation governing business activities is of utmost importance. Given that Bill 33 and its provisions mirror the Alberta franchise legislation, there will be consistency in application across the two provinces that have franchise legislation.

Finally, CCGD views the provisions outlined in Bill 33 as a positive step in providing a good level of legal protection to franchisees. By ensuring that the franchisee receives comprehensive, accurate and clear disclosure documents, Bill 33 will permit the franchisee to make an informed business decision before entering into a franchise agreement. The right of action for franchisees outlined in the proposed legislation will ensure the accuracy of the disclosure document by providing a course of action against anyone who has knowingly made a false statement. Bill 33 will ensure that franchisees receive the franchise disclosure document 14 days prior to signing any franchise agreement, permitting the franchisee an adequate time period to review the material prior to arriving at a decision.

Finally, the provision of a 60-day cooling period after signing a franchise agreement permits a franchisee to exit a signed franchise agreement, should they have second thoughts.

CCGD and its membership believe that it is impossible through legislation to protect any individual from the inherent risks of business. Factors such as economic conditions, poor choice of location, market saturation, competition and poor business decisions are beyond the control of any legislation to minimize. Bill 33 represents a positive step for the franchise sector by ensuring that the franchisee has the right information to make the

proper decision and by placing obligations on the franchisor to provide the information, with penalties for failure to do so.

As we have indicated, Bill 33 strikes a balance between the rights of the franchisee and the franchisor. To go beyond the provisions outlined in the bill will burden the existing franchise system and will impact on the health of the existing system. We urge the committee to support Bill 33 and to ensure speedy passage of the bill.

I will now pass over to Kevin Ryan, who will provide input to the committee from a member's perspective.

Mr Kevin Ryan: In the interests of time, I've chosen to present with CCGD and not burden the committee with a separate presentation. I would like to make mention of the fact that I've spent my entire career of over 25 years in the franchise grocery business and solely in the franchise grocery business. As a member of the Franchise Sector Working Team, I continue to support fully and our company continues to support fully this legislation.

As you are aware, this was a group of franchisees and franchisors, and I can assure you that there was a great deal of input from both groups prior to our arriving at our unanimous recommendation. I believe this provides an informed basis for franchisees to make decisions about their prospective business opportunity. I would also suggest that the liability of officers should provide a great deal of comfort to franchisees, the liability that officers would have if they sign a document which they do not put the proper diligence behind or if they knowingly sign a false document. I think this should be very comforting to franchisees.

We believe it strikes a balance between what a franchisee needs to know to make an informed decision and the need for the franchisor to continue to manage the franchise for the benefit of the entire franchise group. It also allows the franchisor to continue to make significant investment, which in the grocery industry would be in the hundreds of millions of dollars, in their systems and ensure that they have a level of control to allow them to continue to manage that system. For these reasons, we urge the committee to support Bill 33.

The Acting Chair: Thank you, gentlemen. We have about 10 minutes left for questions. We'll start with Mr Gilchrist.

Mr Gilchrist: I appreciate your presentation and the fact that you speak for so many franchisees and their employees all across this province. There's no doubt that we've come a long way in the work of the franchisors and the franchisees on the working committee. Certainly Mr Martin and previous governments had taken us well down the road we're continuing to travel on here, and we're encouraged when we hear the kind of support we've heard not just from presenters but from Mr Martin and members of the official opposition. But there's no doubt we'll continue to hear suggestions and some other changes.

1320

I wonder if I could get your feedback on a couple that we have heard so far. I certainly sympathize if you don't want to make a decision sitting here on the fly, but one of those would be the ability to permit electronic disclosure, whether this would be something that you would see as a useful addition to the act, given today's technology.

Mr Wilkes: Without consulting our membership fully, obviously I think electronic communications is not unique to this particular thing. With the ability to reserve final judgment on it, I don't think that would be a problem. I think it's just another means of providing information.

Mr Gilchrist: Another perhaps more significant change, and we've heard it here this morning, is that sometimes, after the first term of a franchise agreement has expired, the franchisee will want to renew. Even if it was a 20-year term, they may still have an interest in maintaining that business. But the terms and conditions that would apply to a new franchisee may have changed considerably in that time period. The act, as it's written right now, doesn't speak to the need to have full disclosure if a franchisor wanted to simply renew. Would that be something that you think would bring even greater fairness to the franchising relationship, if you had to go through the whole process again in terms of talking about the franchisor's range of business, whether any material change has taken place in that 10 or 20 years since you'd originally signed?

Mr Ryan: Just to be certain, when a franchise is being renewed by both parties, should the disclosure document be provided to the franchisee? Is that the question?

Mr Gilchrist: Yes, an up-to-date disclosure.

Mr Ryan: I see no reason why any credible franchisor would have any issue with that.

Mr Gilchrist: I appreciate that, because that's certainly something in the original drafting that I don't think is as explicit as it should be.

Mr Ryan: That does assume that it is being renewed, obviously.

Mr Gilchrist: Yes, I appreciate that. Those are my questions.

Mrs Boyer: Thank you for your precision and all the details that you have in your presentation.

Going a bit like Mr Gilchrist, this morning we did have experts. Although they said they were in favour of Bill 33 and that this bill was long overdue, they said they thought that the bill was not going far enough, was not strong enough. Although you're saying the bill represents a positive step for the franchise sector and it's good for the franchisee and the franchisor and that you want to ensure speedy passage of the bill, would there be something you would like to add on since you prepared this?

Mr Wilkes: I think the document that you have in front of you reflects the current thinking of the Canadian Council of Grocery Distributors membership. I also think what Kevin said and what Justin indicated in our opening comments is important, that we strike that balance. You don't want to create a bias in the system that will allow

companies that have an option not to support fully franchise operations versus corporate stores. I think the perspective that we bring here is that the legislation does provide a fair balance. It provides a framework in which a responsible business relationship can occur.

But we really want to caution the committee against tipping that balance one way or the other, because it will make decisions for the companies that have options perhaps more difficult to support franchise arrangements. I think that's a real concern that we can't diminish.

I'm not sure, Kevin, if there are additional comments, but that balance is very key.

Mr Ryan: I think as a franchisor and as a franchisee it is absolutely critical that investment continues in that particular program. All stores have a life cycle, all retail companies have a life cycle and their units have a life cycle. Changes in demographics and road networks and those types of things make certain sites become obsolete, and it is critical that there be reinvestment in new sites to maintain the health of the total structure.

There is a real concern on the part of franchisors that if we end up in a situation where the legislation is costly and onerous, it will result in a burden that franchisees have to bear that their corporate competitors don't, which is critical. Second, if reinvestment in the system does not occur, while we'll have done a great job of protecting those who are coming into the system, we will have left those who are in the system in a vulnerable position. That's the balance that we are recommending that the committee recognize.

Mr Martin: Some of you will know, Mr Ryan in particular, a rather sorry piece of small business history in Sault Ste Marie that was played out over the last five or six years where we lost three of our best corporate citizens who were grocers, two of them because the parent company changed hands. Provigo bought Loeb and brought in a new plan, so two families who were very good at what they do, very good in the community and known for a tremendous reputation, had to actually camp out in their stores for a couple of weeks just to stop the parent company from coming in and changing the locks. It was not that these people were losing money or doing anything untoward, but simply because the company was sold and the new company had a different plan.

We also had, Mr Ryan, in your instance, a Ms Carlucci, who ran a very successful, excellent store in Sault Ste Marie, again another very worthy corporate citizen in our community.

All of these people are no longer in the grocery business and it has nothing to do with disclosure before they entered into their agreement. They brought all due diligence, they had lawyers and accountants advise them. It was relationship problems that cropped up that killed them and their ability to participate in the business that they loved any more.

The bill that's on the table would have done nothing for them and will do nothing for, I suggest, a whole lot of other grocers out there today who are probably anxious because they've seen what happened to others. These

others have gag orders on them, ultimately, after the agreements are done, that do not allow them to speak to us or talk to anybody about what happened. Doesn't that call for more in this bill than what we're presently entertaining?

Mr Ryan: I can't speak with any level of expertise to the Loeb situations because at that particular time, you're correct, they were part of the Provigo distribution network. So I don't have any intimate knowledge of that particular situation.

All I can tell you is that with respect to the situation that I'm familiar with, as with any dispute—first of all, the type of person who is most interested in a franchise is usually a very aggressive person. I don't think any legislation will ever prevent some conflict taking place, because by their very nature they're people who are entrepreneurial in nature. So I don't think any type of legislation will prevent conflict from occurring.

I can tell you, though, from my personal knowledge that in the case of Mrs Carlucci, all of the facts are not known.

Mr Martin: I would suggest to you that perhaps all of the facts are not known because gag orders were put on everybody after the deal was done. Mrs Carlucci didn't have a clue. She was brought into a hotel on the premise that there was going to be a marketing meeting, and the locks were changed on her store. Is that a proper and appropriate way to deal with problems in such a reputable business sector?

Mr Ryan: I believe the legislation does provide for dispute resolution. We're talking about some form of dispute resolution. There has been a lot of talk about finding a way to deal with that. Again, Mr Martin, all the facts are not known, and it would be inappropriate in this forum for me to get into that.

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Mr Martin: I regret that we're again casting aspersions without allowing the person who is being indirectly bespoken here—

Just to move on, in Sault Ste Marie we also have another issue, which is some local producers who can't get their product onto the shelves. One of them is still struggling along out there, Lock City Dairies. You probably know of them. They've been at your door trying to get their product onto the shelf in a more equitable fashion at Rome's Independent Grocer. They've been shut out of the Food Basics and, if this keeps up, we will lose again another of our very important local corporate citizens.

The Acting Chair: I need you to form a question, Mr Martin. We're almost out of time.

Mr Martin: OK. We've lost a company already. Mighty Fresh Eggs is gone because they couldn't get shelf space. Again, my bill, Bill 35, addresses this. It speaks about freeing franchisees up to source product where they can find it at a competitive level as long it's not the trademark issue. Are you favour of that or against that?

Mr Ryan: Absolutely, we could not support such a suggestion. First of all, it flies in the face of the reason that a franchisor would franchise. Second, I am familiar with the Lock City situation. We carry the Lock City product in our store in Sault Ste Marie. I'm sure you're aware of that. But we also have to be mindful of the supply to all of our other franchisees, and we cannot prejudice the supply to the balance of our franchisees at a competitive price because of a situation in one particular town. This situation is replicated in other towns, and we try to adapt to the local situation as best we can. But we have stores that we have to supply in Hearst, in Kapuskasing, in Cochrane, in many other towns where we are relying on a supplier who can supply the entire north.

Mr Sherwood: If I could add to that.

The Acting Chair: Very briefly, please.

Mr Sherwood: In discussion with our members on this very issue, they have also indicated that sourcing of local product or product mix is done on a one-to-one relationship and there is flexibility for that type of thing to happen in most instances.

The Acting Chair: Thank you very much for your presentation.

Mr Martin: Mr Chair, while they're leaving and the next group comes, I've got some more research that I've done on this issue because I think it's an important piece of this whole discussion: the question of the freedom to source product and put it on your shelf and the impact that has on local economies. I'll distribute that while folks are moving back and forth.

TONY McCARTNEY

The Acting Chair: I'd like to call on the next presenter, Mr Tony McCartney, from the Color Your World Dealer Association. Welcome to the committee, sir.

Mr Tony McCartney: Thank you. Mr Chair, honourable members, ladies and gentlemen, good afternoon. My name is Tony McCartney and I'm from Niagara Falls. I'm a franchisee in the paint and wallpaper industry. My experience in this field goes back some 36 years in three countries: England, the United States, and now Canada. This is my 17th year operating a franchise in Niagara Falls.

I am also a member of the Franchise Sector Working Team and have been since its inception. My franchisor is Color Your World, a division of ICI Canada, who service and operate over 200 stores across Canada, coast to coast. This, in turn, is a subsidiary of Imperial Chemical Industries of Great Britain, the largest manufacturer of paint throughout the world.

Color Your World St Clair Wallpaper was purchased by ICI in 1997, following bankruptcy. Less than one year prior to that, Color Your World, again in a bankruptcy acquisition, was purchased by St Clair Wallpaper. During the five years preceding this, the Color Your World company was traded three times. During these troubled years, I served as president of the Color Your World

Dealer Association for two separate terms. The first period was for two and a half years and then more recently for one year. Initially I represented 108 franchise locations coast to coast. Today we number 40.

I congratulate the government for introducing this legislation at this time. Since the Grange report in 1971, this has been long overdue.

In addressing the issue of right to associate, I have to record that during the very difficult time I experienced, the right to associate and communicate freely within our members and with the company was approved and encouraged. Unfortunately, this is not the rule of thumb in some franchise systems today. Again, hopefully this legislation will address this inequity.

I have concern that the fair dealing provision as set out does not identify solutions to an area in which failure or abuse is most common. As mentioned earlier, three changes in ownership and two bankruptcies resulted in a trail of disaster for some 60-plus franchisees within my franchise system. Not only did these operators lose their initial investment of around \$150,000 to \$200,000, but many had further injected capital into their livelihoods through remortgaging their homes etc, causing more hardship. This left a trail of personal bankruptcies, family disruption and stress and even mental breakdowns.

Today debts of these unfortunates are still being pursued by the company and being paid off by some franchisees who are still in the system and others who were unable to continue. Loss of equity and personal debt varied location by location, but sums of \$300,000 to \$400,000 were not uncommon. As a personal example, I emerged as one of the more fortunate people. My loss in equity ranged between \$80,000 and \$100,000.

Fair dealing or consideration was never evident during these times. The policy adopted was that the debt was purchased by the company and has to be repaid. With due respect, I would ask deliberation and consideration to the area of fair dealing, which may alleviate repetition of a instance similar to my experience.

In conclusion, I would like to thank the committee for affording me this opportunity to present my thoughts today. If I am able, I will answer any questions you may have. Thank you.

Mr O'Toole: Thank you very much. It's wonderful to have real-life experience come before us without some sort of ultimate, long-term goal here.

There are two provisions, obviously: The disclosure part, which is central to the whole piece, would have addressed your case, as you described a company that had three or more failures and other failures as well, and the fair dealings part would have addressed it too. If there were a proper schedule of what should be disclosed, its financial disclosures and everything else, wouldn't that become part of the fair dealing provision? Would that have solved your own case that you described of losing \$80,000 to \$100,000?

Mr McCartney: Not really, Mr O'Toole, because now it's part of history; these bankruptcies and the change of ownership are part of recent history. I was in

the system before that. It's record now, but for anybody who came before that time—as of now, if they franchised all that, they would know the history of instances like this. Their record is placed up front, and you make your judgment on purchasing from that history. So will those things change?

When I came into the system, the franchise was sound. It was a good business to be in. It wasn't for some seven or eight years after that when all these things started to fall into place. It was bought and sold, bought and sold; it was leveraged far too much, and then following bankruptcy to bankruptcy.

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Mr O'Toole: You experienced it; I'm trying to understand it. What I mean is, the previous presenters also alluded to the fact that markets change, conditions change, and what I would deem to be appropriate disclosure today may turn out to be the last successful day I had. As situations and interest rates and other things change, material matters change, the relationship is a statement of what happens today when you sign on to this business arrangement. Because of a whole bunch of economic and other factors, some of which may or may not be in my own control, our association deteriorates for some reasons.

What I'm trying to say is that the disclosure initially, when the franchisee decides to sign on the dotted line, if that is fully accountable that day that we're talking about and the previous years today—that won't help you, obviously; that's water under the bridge, so to speak. But today, would this provision in this legislation help prospective franchisees from today forward to deal with what you dealt with?

Mr McCartney: Definitely, up until the time they make the decision. It helps them in making the decision. Once the decision is made, that clause is really put to one side and fair dealing is there for evermore after that.

Mr O'Toole: That's reasonable. I appreciate that.

Mr Gill: This might be a repeat of some of the questions Mr O'Toole might have asked, but since you're experienced and you were the president of the association of the franchisees as well, with this franchise chain, what was the main root cause, in your mind, of the problem and how would this bill, if it was enacted then, have alleviated some of these problems?

Mr McCartney: As Mr O'Toole confirmed, the history of these transfers of the company, the first three times they were bought and sold, bought and sold, bought and sold. As I say, the reason the company went the route it did was because it was leveraged too much in the end. Yes, this document would state that and then I, as a prospective franchisee, would see that and then I would make my decision whether I would go into it or not.

The only thing is, as of today this company is now under the flag of ICI, which is one of the most stable companies in the world. The document would relate that. Even though it may show the history of what has gone on in the past, that's irrelevant to me because the people in

charge at that time are not in the business now, it's not leveraged now.

Mr Gill: You're basically saying it doesn't matter what it says in the disclosure agreement as long as the backup company is a strong company. Is that what you're saying?

Mr McCartney: In my case, yes. I mean, it's very stable and that would influence my decision.

Mr Martin: To get back to the questioning that Mr O'Toole was on to, for you the disclosure part of this legislation really has no—

Mr McCartney: Has no bearing.

Mr Martin: No bearing. But there are literally thousands of franchisees out there across Ontario today who are in need of some further relationship regulation. You participated, you said, on the working team.

Mr McCartney: Right.

Mr Martin: What was your position when you saw that the government was only going to do the disclosure piece and they weren't going to go any further? What was your immediate reaction? What would be, in your mind, the most important things for us to consider as we go down this road now and try to, in my view, improve this legislation so that it does cover the franchisees who are already out there doing their best? Given the nature of the world we're in, where companies buy companies and there are mergers and all kinds of things going on, what would be the things you would see as important?

Mr McCartney: This is why I stated that I think it's important that the fair dealing clause be maybe re-tuned or fine-tuned or whatever you'd like to call it.

Mr Martin: Any definition of that?

Mr McCartney: No specifics. No, it's hard for me to say. But this would have helped our company, as I say, with these huge losses by franchisees, which occurred because of supply problems during those bad times. Supply problems were horrendous. Consequently, we were unable to obtain materials to sell. Debts rose. At the end of the day, there's no consideration on those debts.

Mr Martin: So you're left holding the bag.

Mr McCartney: Exactly.

Mr Martin: Do you want to define the supply problem for me a little bit?

Mr McCartney: Fairly early on, the suppliers to the corporation obviously got wind of the financial difficulties the companies were getting in, so they were a bit hesitant in supplying raw materials—titanium dioxide etc. Obviously, this caused a supply problem when it came down to us. I would quote supply issues as much as 55% to 60% zero on your order each week. It made it very difficult to carry on business. We asked several times that we be excluded from buying from them, if we could go out to outside suppliers, if we could get an outside paint manufacturer to make product for us. We were denied. We did go outside unofficially to others, even retail stores. I personally went out to retail stores nearby, buying product, bringing it into the store just to satisfy customers. We still paid our fees on it, but that was the situation.

The Acting Chair: Thank you very much for your presentation.

NEIL DAVIES

The Acting Chair: We call on our next presenter, Mr Neil Davies. Welcome to the committee, sir. You have 20 minutes for your presentation.

Mr Neil Davies: Good afternoon. My name is Neil Davies. I am a small business entrepreneur. I've done many things in my life. In 1996, I was looking for another business after many years being in the restaurant business, and I found it was sort of a new society looking for a business; it was one composed of huge government, large unions, and small businesses were being largely taken over by franchises. I felt if you can't beat them, join them. After about six months of searching, I thought I had found a fabulous franchise.

I have a background in the restaurant business. I found a beautiful restaurant, not far from here, in downtown Toronto, five-day week, 15-year lease, and it was represented to me that it had high sales, as it certainly had very high expenses. I was shown cash register tapes, which showed me the sales. Fine. I purchased the restaurant, and immediately it appeared to me that I had been defrauded.

At the end of the summer, when the season changed—I purchased this restaurant in the winter—I knew for certain I had been defrauded. There was no uptake in sales. Having been relieved of most of my money, I could not afford to litigate this case, costing about \$100,000 to \$200,000. So I went to law school. I learned some law, litigation. I went on an on-line law library and I'm prosecuting the three parties involved myself.

This case is about one year old. Until recently, it went better than expected. I often had the sympathy of the courts. After fierce resistance by the other parties, I got hold of those cash register tapes that they had shown me. I discovered that the figures on these tapes differed by almost \$400,000 from the figures on the tapes that I was shown and the figures that their agent had given me and figures that the franchisor had given to me.

Now, when I'm in court the lawyers for the opposing side no longer deny the fraud. They are trying to defend their clients and knock me out on technicalities. I can quote you what one master said when they asked for costs. He said: "I don't want to hear from you about costs. You choose your clients."

1350

Recently, these defendants used rule 56 of the Ontario Rules of Civil Procedure against me, asking for \$350,000 that I'd put up to secure their legal costs in the event that they should lose. During examination, I refused to co-operate with them fully and give them all the intimate details of my present and past financial life, although I did give them most of the information they wanted. But because I feared, of course, having another fraud perpetrated on me, and because I did not co-operate fully, I lost the recent motion. I have to put up more money than I

can afford to guarantee the other side's costs and therefore I have had to retain a law firm to handle the appeal.

So we have in Ontario a group of men who are carrying on a racket. They have an engaging, smart, ruthless agent who befriends and entices business people, mostly immigrants, into signing franchise contracts based on fraudulent misrepresentations and an accountant who arranges business loans and remains silent to all this. I've garnered evidence from part of the bank's file that I recently obtained that the banks don't care because the loans are 75% guaranteed by the government.

After obtaining possession of my franchise, my restaurant windows were constantly being smashed. When I tried to sell, the franchisor would not approve the sale. Here is a brief excerpt from a conversation that I taped on September 16, 1998, with their Homelife agent, who is their close associate. I am now out of the organization and I'm asking why they gave me so much trouble in approving my sale of this franchise.

The agent says: "Bill called me and told me that he should let me go down and take the business for nothing ... so they can have it for free. Why should they agree" to its sale?

In ending, these people are trying to use the courts to shield their criminal activities. I hope this will change with my appeal. In the present, it is your duty to pass some strong legislation imposing a high standard of care on the part of the franchisors in disclosing all relevant information and with tough enough sanctions to deter those who may think of not complying.

The Acting Chair: Thank you very much. Questions?

Mr O'Toole: Thank you, Mr Davies. You had an interesting experience. You don't have a written presentation at all, do you?

Mr Davies: I can give you a copy of the outlines that I've used.

Mr O'Toole: Very good. OK. The other thing is, I was interested; are you a lawyer now?

Mr Davies: No, I'm not a lawyer.

Mr O'Toole: You just sort of went to law school.

Mr Davies: Without the Internet I couldn't have done this. I have an on-line law library and I get my law from past judges' court decisions. I am accredited as a law clerk in Ontario in litigation.

Mr O'Toole: I'm not questioning your legitimacy. I'm just trying to understand how to explain the lack of success in court. You had a previous business prior to getting into this?

Mr Davies: Yes.

Mr O'Toole: It wasn't a franchise, obviously, of any sort.

Mr Davies: No.

Mr O'Toole: How long were you in business?

Mr Davies: I've been in many businesses, but I have had a small restaurant since 1983.

Mr O'Toole: I qualify myself here as not really having some of the answers to the questions I'm asking, but you say the government guarantees the loans?

Mr Davies: Yes.

Mr O'Toole: Which bank is this? I want to find where that bank is. I'm serious. What bank is it that the government underwrites the loan? I'm not sure of that.

Mr Davies: This is why we have such an explosion of franchises like Second Cup, for example, and Coffee Time Donuts, because the government is underwriting them. When one gets a small business loan, it's supposed to be based on the equipment in these restaurants. So far so good. But in the event of default, the government guarantees 75% of the loan. So the banks don't care.

The proof of this is in information I got from the Royal Bank file. They wouldn't release the whole file, because they're nervous. But I was astounded to discover that the financial statement, which is based on the whole loan, was entirely suspicious. When I investigated the statement, I could not authenticate it. In other words, it's my inference that the statement is forged.

The statement is immediately suspicious to any experienced businessman, never mind a loans officer. This statement wasn't signed, it can't be authenticated, you cannot trace its authors and it has a disclaimer on it saying that the figures come from the vendor, the franchisor. No bank would normally give out a loan under such circumstances. They always want an accountant, preferably a CA, to verify the figures. The only reason they're doing it is that they can hardly lose. They have a lien on the equipment of the restaurant and the government is guaranteeing 75%. It's a no-lose situation.

Mr O'Toole: The bank wasn't related to—excuse the humour here—Minister Stewart, was it? It was the business development bank, I guess, which would be federal, right?

Mr Davies: This was not through the business development bank. I got my loan through the Royal Bank. One can get them through any bank. The federal government is the entity that guarantees the loan.

Mr O'Toole: Thank you very much.

The Acting Chair: There are further questions.

Mr Martin: Yes. We have more questions for you. Thanks for coming today—a very interesting story.

You are suggesting very strongly that we have disclosure legislation. We were told this morning by a deputy, Mr Levitt, that a good salesman can talk his way around any disclosure statement. I'm calling for much more in this legislation. I have tabled my own bill, Bill 35, which talks about a vehicle, controlled by government, that the disclosure statement would be registered with so that we could make sure the information was complete and accurate. We're talking about a dispute resolution mechanism so you wouldn't have to go to court. You could go to an arbitrator or a mediator and have some early resolution that reflected the truth in the situation. We're calling for a definition of "fair practices" that would go so far as to allow franchisees or restaurants to source product wherever they liked.

Have you looked at the bills, and is there anything else besides disclosure and making sure disclosure happens that you want to recommend to the group here today?

Mr Davies: I have not looked at the bill, but your suggestions are excellent. I think it's excellent as far as it goes. Beyond that, the only remedy would be with other institutions, like the police when it goes into fraud. However, the police are underfunded and are shy to get involved in smaller frauds. They like it over \$1 million. Beyond what you are proposing, the only other suggestion I can make is that funding of the police be upgraded or some reform be made there.

Mr Martin: Certainly your story is not unique. We have story after story. Back in the early 1990s there was a flurry of activity around the question of Pizza Pizza and how they dealt with some of the folks they dealt with. At that time they were calling for legislation that not only called for disclosure—because most times it's after you are into the deal that you find out that what you were told in the courtship period is not the truth and a fraud has been perpetrated.

It was also suggested here this morning that we don't have enough casualties yet, that we don't have enough bodies piled out there yet or enough families destroyed in Ontario to warrant anything other than a call for disclosure. What is your experience, rubbing shoulders with colleagues in the business and in the business world, around the question of franchising and the lack of regulation and what is happening out there?

1400

Mr Davies: It certainly has not been a happy experience. You mentioned that we don't have enough bodies yet. I might add that when the time comes, and one day it might, that coffee becomes overly saturated or they publish news that coffee causes cancer, brain tumours or whatever, then you will have enough bodies, because there is a huge number of franchises and they'll collapse. As I mentioned earlier, the number of them being created is infinite because the federal government is financing them.

At the moment, franchises are not a happy situation to be in. From what I have seen, at least in the franchise I was involved in, they were selling to a lot of recent immigrants who not only didn't understand what they were getting into but were unable to assert their rights. They have just gone away and said nothing. So certainly some publicity on this point would be warranted.

Mr Martin: Just one more question, if I might. There is a suggestion as well, of course, coming from franchisors in particular and some of the people in the Canadian Franchise Association and the group that came before us two groups before you, the Canadian Council of Grocery Distributors, that in some instances it's the franchisee who doesn't do the due diligence, who doesn't work hard enough, who perhaps brings some of their own baggage to the situation. We don't hear much about that because, as I suggested to them, there are always gag orders put on as soon as a deal is cut, and ultimately one is, because franchisees can't go the distance. At some point they throw up their arms and say, "I quit," and they usually take whatever lower debt is offered at that time.

Mr Davies: There are people, again, who don't know their rights. If there be fraud, then the gag order can be voided.

Mr Martin: Is that your experience?

Mr Davies: That's what the law says. That's what the court decisions say.

Mr Martin: The question I had for you is, did you do the due diligence? Did you work hard? Were you a good businessman? Were you a good entrepreneur?

Mr Davies: Yes, I was, and of course what the franchisor does is blame it on the franchisee. Indeed, in my court case initially—these people are so corrupt that they weren't even straight with their lawyers—their lawyers attacked me for being incompetent in my franchise. However, when I got hold of their tapes, they showed me to be a better operator than they were. I had higher sales than they did. So of course, with their tail between their legs, they dropped those attacks. But that is what franchisors do. They want to blame it on the franchisee.

Mr Chudleigh: Thanks for coming, Mr Davies. Very briefly, in your presentation I think you said that when you purchased your franchise, you did so from an agent or a broker?

Mr Davies: I did. The vendor and the broker were in very close collusion.

Mr Chudleigh: But the broker was the person you actually signed the deal with, or he arranged—

Mr Davies: Initially, the broker. Of course, the contract was with the franchisor.

Mr Chudleigh: OK. Thank you very much.

The Acting Chair: Any further questions?

Thank you very much for your presentation, Mr Davies.

FORMER PIZZA PIZZA FRANCHISEE ASSOCIATION

The Acting Chair: I'd like to call Dave Michael of the Former Pizza Pizza Franchisee Association. Welcome to the committee. You have 20 minutes.

Mr Dave Michael: Thanks for having me and hearing me out here. In that 20 minutes, I think I'll give you a brief history of my experience with Pizza Pizza and franchising and then leave the rest of the time for questions, which might be the best way to go. I would need about 20 days to tell you all the stories, and you wouldn't believe them anyway.

I was a Pizza Pizza franchisee from about 1982 to 1995. I had a store in Toronto. I ended up buying a new store in Orillia; I started that from scratch. As you may well be aware, I ended up in a lawsuit with Pizza Pizza, with 48 other franchisees. I was the president of SOPFA, the Southern Ontario Pizza Franchisees Alliance, which was a grassroots organization made up of those who were involved in this lawsuit with Pizza Pizza. We ended up in arbitration as opposed to the courts. All my numbers are very approximate: We won \$3 million from Pizza Pizza, which I think is a fraction of what it should have been. Most of that went to the lawyers, but I will add that they

fought very hard. There was a lot involved, as you can well imagine, in a case that size with 48 litigants. I got nothing out of it. I lost my store in Orillia. I paid \$170,000 for it. Pizza Pizza got it back free and clear.

I won't go into all the details because there's not enough time. Things I experienced: Pizza Pizza changed sales figures. We claimed it as fraud through the arbitrator. We were told it wasn't fraud, but if you ask anybody on the street, that's fraud. I have all the documentation to back that up, but for whatever reasons it wasn't viewed that way. The amounts were very large, and this is something I feel they got away with even after pursuing it through the courts, through arbitration.

As far as Bill 33 goes, it's better than nothing, but I don't think it will protect people from the people they need protection from. I'm sure there are franchisors out there who don't even need Bill 33 in place. However, there are many others. Unfortunately there are a lot of people, and I imagine you've already heard most of them, who are new Canadians, not highly educated, not sophisticated business people but people who are willing to work hard, take a chance on themselves and usually use their house or everything they have to take that chance to improve their lives for themselves and their families. A standing joke among the litigants with me was that some of them had left a Third World country only to end up in a Fourth World country, that being the Pizza Pizza franchise system.

I'm open to questions. I was very involved with the litigation and such.

The Acting Chair: The parliamentary assistant.

Mr O'Toole: Thank you very much, Mr Michael. Certainly to some extent I would say I had read those issues in the paper when that was a public concern. Not to be political or anything, but I think all governments over the last while have looked at this and for whatever reason have failed to do anything. You're aware that there are really three particular focuses of this bill: the disclosure aspect, the fair dealing aspect and the right-to-associate aspect.

The question I have for you is, do you feel that this particular piece of legislation in place today, if you were starting a business, could have helped to prevent or avoid some of the things that you and your business associates ran up against? It's not a perfect world.

Mr Michael: I'm very well aware of that. I don't think it would have. For example, for disclosure, and the principals or shareholders and whoever may be involved in running the company—the directors and such—in my case, if you're aware of the newspaper articles and such, Lorn Austin was in charge of running Pizza Pizza for the most part. Lorn Austin did time in US federal penitentiaries. I think it was the sheriff of Dade county in Florida who said he was the most prolific blue-collar criminal he'd ever run into. When Lorn Austin joined Pizza Pizza, I had already been in the system and was already in my store and already had my house on the line. If this legislation was in place, and if they disclosed that this fellow is now going to be coming into the company and running

it, what would I do? I would know, but what would I do at that point?

Mr O'Toole: I guess it's a case that there is a process here where substantive changes occurred within an appropriate period of time and you would have some recourse. Is that one way that could be strengthened in this bill? How long would that take? Administrative directors at all levels could change, and it's up to the corporate culture to deal with that.

1410

Mr Michael: Obviously, from the trouble I was into—I'm a pretty simple guy, and things seem pretty straightforward and black and white to me. When somebody says they're going to do something and you know what that is and you both understand that, that's all that is needed to be said and done.

In just about every partnership agreement there's a shotgun clause, which is: If they want to terminate the partnership, I'm sure everybody is very well aware, somebody makes an offer and the other one can match it or accept the offer to buy that person out. I don't know why something like that can't be in place in the franchise system. If I'm a franchisor and I have to protect my name and all these things, and somebody has made an investment and they're not happy with it: "OK, here's your money back; here's your \$80,000. Get lost. I'll sell it to somebody." I made this offer to Pizza Pizza—I didn't want anything from them, not a lawsuit or money or anything—to take their signs and I'd just operate my business, Dave's Pizza, whatever. They wouldn't go for that, nor would they make me a reasonable offer for what I had invested.

I don't know why something like that couldn't be in place. You wouldn't need a huge bureaucratic department or new agency or anything like that. It would be very simple. It would be like buying a house or when you bought your store. You wouldn't have a \$100,000 legal bill, not to mention millions of dollars in legal bills. It could be done very simply, I would imagine, if something like that were put in place. That keeps everybody honest, I would think.

Mr Martin: I want to first of all thank you for being the lightning rod at one point in time in the history of franchising in Ontario that finally woke somebody up. This whole process of trying to get legislation and regulation in place began so that people wouldn't have to suffer the same fate that you suffered. The articles that were written—and I have one here in the Report on Business. I think that's you.

Mr Michael: That's me.

Mr Martin: You had a moustache back then. That wasn't against the contract you signed, was it?

Mr Michael: It may have been.

Mr Martin: That may sound ludicrous, but I read through some of the articles that have been written on Pizza Pizza, and in the volume I gave you this morning, from section A1 to about A56 it's all on Pizza Pizza. If you want to read their story and understand the crux of this whole matter, this is it in more than a nutshell. This

is it in detail, the kind of bad dealing, the situation of franchisees who go into a business in good faith, simply: "You give me this, I'll give you that. I'll work hard and we'll all make money. Let's get on with it and be happy." It turns out at the end of the day that wasn't the story, it wasn't in the cards, particularly when Mr Austin came in. I believe that your story was getting good coverage until Mr Austin sued even the Toronto Star for having the temerity to write the story and expose it in the public forum.

This may be an extreme case of what's happening out there, but it is nevertheless a good example of all the things that can happen if you don't have regulations in place to protect people. I don't think you were asking for any favouritism or privileged position in this. All you were asking for was a chance to make a few bucks and run a good business and compete.

Mr Michael: If I could interrupt for a second just to explain an example of that, I had the store in Orillia and I was paying something like 1.5% of my sales in cartage. So not only did I buy food from them at inflated prices, but I paid them to deliver it to me. These were the same green peppers I could buy cheaper right next door in Orillia and support the local economy. I won't get into that. They just unilaterally changed that for the stores out of town. I think it went to 4.5%. At that time the store was doing very well. I guess they figured I was making too much money, a living, and they changed that. I paid more for them to deliver my food to me than I did for rent on the main street of downtown Orillia, right up from the docks and all that. My rent was less than what I paid them for cartage fees, and that was done just the next day without my say-so or agreement and totally against what was in the franchise agreement.

Mr Martin: I'm told as well that you could lose your franchise for your delivery people not smiling when they deliver the pizzas?

Mr Michael: I'd fire them if they didn't. I'm joking.

Mr Martin: Is that true?

Mr Michael: Yes, they did have a campaign, and they did have memos out to that effect. I'm almost positive.

Mr Martin: You were the ones who also had to deliver within 30 minutes or the pizza was free?

Mr Michael: Right.

Mr Martin: At your cost?

Mr Michael: Absolutely.

Mr Martin: And that created a problem with people speeding and traffic tickets?

Mr Michael: That should be outlawed. Nobody should be able to hold the public hostage for their benefit. It's ludicrous.

Mr Martin: So disclosure legislation would not have helped you.

Mr Michael: There are so many things. No, it's not enough.

Mr Martin: Disclosure legislation would not have prevented a guy like Mr Austin to come in and do what he did?

Mr Michael: We would have known about it. But, again, as I say, what would I do at that point? You're already in, and this has changed after the fact.

Mr Martin: We need more.

The Acting Chair: Any more questions?

Mr Chudleigh: I take it that Pizza Pizza held the lease on your store?

Mr Michael: Yes, they did.

Mr Chudleigh: Was that part of the agreement? They had to hold the lease? It wasn't an option?

Mr Michael: That's right.

Mr Chudleigh: If you had owned that building, they would have leased it and you would have paid rent on it?

Mr Michael: Yes, and that has happened in other—

Mr Chudleigh: Even if you owned the building, they still have the lease?

Mr Michael: Right.

Mr Chudleigh: If you had had that lease, you could have just taken down their sign and operated Dave's Pizza, as you say, and probably done very well.

Mr Michael: Unfortunately, once you get into that position in the relationship, you don't have the money to find out if you can do something like that. Again, the people aren't sophisticated business people. The thought did cross my mind, "If I could buy the building, but there's already a lease in place and can I get out of that lease and blah, blah?" I don't have the answers and you need expensive counsel to get them.

Mr Chudleigh: Thanks very much. Thanks for coming.

The Acting Chair: We have a couple of minutes left if there are any additional questions.

Mr Martin: Yes, if you don't mind.

The Acting Chair: One short one.

Mr Martin: There was a suggestion this morning by the counsel for the Canadian Franchise Association that we don't have enough evidence yet that there's a problem in the industry and that we need relationship regulation that goes beyond just simple disclosure. Would that be your position?

Mr Michael: It's a good way to stall everything, I think. When I went to certain hearings and that, during the time of the lawsuit, and was in places like this, I'd have franchisees from Golden Griddle and all sorts of places in tears, coming up to us and asking what they should do. I didn't ask for any of this. Even when it happened, it was like everybody else stepped back. I didn't step forward. All the other franchisees just stepped back. I didn't ask for any of this. People would come up to me in tears, like I knew something or could do something, people older than me losing their houses and stuff.

Certainly, whoever said that is more than well aware of all those situations, plus I'm sure countless others you haven't heard of and that he hasn't even heard of.

Mr Martin: That's what I suggested, that the 4,600 families represented here and the 5,000 who are before the courts every year in Ontario fighting their franchise system are just the tip of the iceberg. There are lots of families who don't go to court, who don't tell their

stories, who simply either walk away or remain indentured for the rest of their lives.

Mr Michael: Absolutely.

The Acting Chair: Final question, Mr Gill.

Mr Gill: How has the Pizza Pizza franchise system changed since your days? Has it changed? Can you answer that?

Mr Michael: I imagine they're more careful not to get caught.

Mr Gill: Simple as that.

Mr Michael: Well, I'm not involved with it. From what I understand, nothing has really changed. You see the ads on TV, perhaps. They're very good marketers. They have a very good product. It's just that they've gone nuts. They've thrown the baby out with the bathwater in dealing with all their people, all their franchisees. They've put a special on, if you've seen. For \$9.99 you can order any pizza, any size, with any amount of toppings and a pop this big, all these things.

Mr Gill: Or a \$6.99 walk-in special, or whatever.

Mr Michael: There you go, OK.

Mr Gill: And they still have the 30-minute guarantee. I think they do; I'm not sure. Is it 40 now?

The Acting Chair: It's not that I'm an expert.

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Mr Michael: For example, with these specials and discounts, the franchisee doesn't get a discount on the food that is being used and purchased from Pizza Pizza, which he then pays royalties on and pays rent on and pays advertising charges on—and in my case, cartage—all these things. None of this is waived or discounted.

If Pizza Pizza can get stores to do \$20,000 a week, that's \$1 million a year. They have 450 stores. They just look at the numbers they can drive those sales up to and figure out their bottom line. The franchisee's bottom line is in the negative, it's dwindling, and the more specials they come out with and the higher the sales go, the more he is losing. But not Pizza Pizza, because you have to buy everything from them and it's at full price. So if they can sell everything at cost by the franchisee, he'll be broke and they'll make millions and millions of dollars.

When this started, before the lawsuit, everybody was complaining about it and saying: "What am I supposed to do? If 60% of my sales are specials, the rest doesn't even cover the bills and labour and such." They said, "Well, take your credit card and pay your bills. This is your business. Take your personal credit card and pay it." People did it because they didn't want to lose their house, they had nowhere else to go, and they built up such great debt that they couldn't get out from under that rock. They were stuck between a rock and a hard place, all precipitated by them and their profits.

The Acting Chair: I'm going to have to stop you because of the time. Thank you very much for your presentation.

ONTARIO FRANCHISEE COALITION

The Acting Chair: The next presenter is David Sterns from the Ontario Franchisee Coalition. Welcome to the committee, sir.

Mr David Sterns: Mr Chair and honourable members, I am testifying today under the expectation that there is immunity. I have been threatened three times with a lawsuit by someone in this room for speaking about franchising. I would like to state for the record that that is my expectation. I have been informed that there is immunity but that it has never been tested, and I prefer it not to be.

The Acting Chair: I am pleased, on behalf of the committee, to repeat that assurance and to remind everyone that witnesses before committees enjoy the parliamentary privilege of freedom of speech. It is not restricted to members. It is afforded to you as a presenter as well.

Mr Sterns: Thank you.

My name is David Sterns. I am speaking on behalf of the Ontario Franchisee Coalition. I'd like to thank you for asking us to come and speak to you today and to continue the OFC's role in this important process of enacting a franchise fairness law for small businesses in Ontario. The law is certain to affect the lives of thousands of business people across the province and their employees. If the required changes are made, I think it's safe to say that the law will go a long way towards restoring credibility to franchising as a method of doing business and as a means of raising capital in Ontario.

The Ontario Franchisee Coalition represents a network of franchisee associations in many industries, including of course fast food, automotive repair, private education, grocery, photo finishing etc, and the OFC has participated in the Franchise Sector Working Team, which was largely responsible for the bill that is before you today.

I am a litigation lawyer in practice with Sotos Associates. John Sotos is the main partner in the firm. I am here on behalf of the Ontario Franchisee Coalition, although, as you will see from my submission, I share his ultimate conclusion about what is right and what is wrong with this bill, and come to that conclusion with the membership for the reasons I will go through. Approximately 80% of my practice involves franchise litigation and dispute resolution. I am proud to say that I represent franchisors and franchisees. It is not, as some would make it, an all-or-nothing or us-versus-them game.

Before speaking to you about what is good about the law and what can be improved on, I would like to tell you how I personally became a partisan of franchise fairness. I should tell you that franchising, as you may have noted from my first question, is not an industry that encourages dissenting views. I can say from personal experience that professionals who speak about what is wrong in franchising are labelled as pro-franchisee and anti-franchisor. Much the same happens with franchisees who speak about the problems in a particular system. They are branded as losers, ne'er-do-wells, troublemakers, and you

will probably hear, if franchisors are being honest, the word "disgruntled" used many times—disgruntled franchisees, former franchisees, unhappy franchisees. Usually the word "disgruntled" is there. I tried to find the antonym for "disgruntled." I thought it might be "gruntled," but I think it's just "complacent." If that makes me a disgruntled franchise lawyer, so be it.

My personal experience is born of a couple of events. One of them came when we were consulted by a number of franchisees. It wasn't Pizza Pizza—I came into the firm after that—it was 3' for 1 Pizza. This is a system which is the lowest of the low. It is the most opportunistic, it is rapacious, it preys on political and economic refugees, on people who can't speak English, on people who can barely write their names. What shocked me, from that experience, was the way the people who came to us had this notion that they were somehow protected, that Ontario would not allow this to happen, that surely they just didn't understand the law and we were going to show them the way. We had the displeasure of having to tell them that there was no law. The only law was the law they signed, which was the law that was written by the franchisor.

These were people who were living three, four to a house or to an apartment, working in squalid conditions, borrowing from family members to raise money for their franchises and working in conditions which were indistinguishable from slavery of 200 years ago. Those are the disgruntled franchisees I hope you hear from, although I suspect that you won't because many of these people simply will go off into the night.

At the other end of the spectrum there is the more sophisticated franchisor, the one who retains extremely sophisticated counsel, the one who knows enough to join the Canadian Franchise Association to get the Good Housekeeping seal of approval. These are the ones who go after people with some more money, maybe people who are educated or people who have come into an inheritance, people who have got a government pension or something like that. These are the ones who use the franchise agreement as a tool of oppression and of stifling dissent.

In one particular instance the conduct was so beyond the pale, there really wasn't a way of going to court. This conduct evades description. It's impossible to capture the kinds of treatment that you see going on. The out-and-out lies, the out-and-out fraud, the out-and-out misrepresentation, that's all well and good and the law will go a long way towards covering that, but we're talking about conduct which goes on a continuum. Where do you draw the line, and so forth? That is I think the ultimate mandate of this law: to somehow try to have a circle around which the franchisor must operate in order to adhere to some minimal standards.

In any event, back to this franchisor. After numerous appeals to reason by their counsel, we'd had to go to the Canadian Franchise Association and make a complaint. They have a code of ethics which contains language similar to what you'll see in Bill 33. The code of ethics

says, "Fairness shall characterize all dealings between a franchisor and a franchisee." Nobody I could speak to or I could find, whether it was a neighbour or a family member, could make out a case where this conduct that we were complaining of could possibly be considered fair.

In any event, the complaint was bounced back to us four times. We were told, for very technical reasons, it couldn't be received. One of them was that it came from the law firm, not the client. The other reasons were that there was litigation involved, which was true. Litigation, however, had absolutely nothing to do with the complaints or with the reasons for bringing the complaints. In any event we formed another conclusion, and that is that franchisors are not a body that looks after itself particularly well. They're extremely good when it comes to writing agreements that fence in the franchisees, so you have 60- or 70-page agreements. You don't see that kind of detail because people are talking in very laconic or general statements. They regulate things with great precision. However, when it comes to their own conduct, they're content to talk in terms of fairness and so on and so forth.

So before we get to the law, I think we have to talk about how we got here today. In its origins, franchising was never a complicated way of doing business. It was very simple. The idea was that the franchisor lent its name to the franchisee and gave a certain know-how, a certain way of doing business. In exchange for that, the franchisee paid royalties. At the beginning, you had agreements three or four pages long that captured the essence of the agreement. The rest was built around the trust and understanding and the ongoing back and forth that characterized this living, breathing relationship, which is the franchise relationship.

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The Acting Chair: Pardon me. I have just been given some new information and, for the full benefit of your protection, I want to read something into the record. It is further information to what we provided a couple of minutes ago on the issue of parliamentary privileges, and it reads as follows: "While members enjoy parliamentary privileges and certain protections pursuant to the Legislative Assembly Act, it is unclear whether or not these privileges and protections extend to witnesses who appear before committees."

For example, it may very well be that the testimony you have given or are about to give could be used against you in a legal proceeding, and I caution you to take this into consideration when making your comments. That's new information. I apologize; it wasn't available to me earlier. But be guided by that, please.

Mr Sterns: Thanks.

Mr Martin: On a point of order: I just want it on the record that that concerns me deeply. We have told a whole number of deputants to this committee that they did in fact enjoy the same parliamentary privilege that we enjoy. I wonder if that requires any further discussion here and decision-making by this group or communica-

tion plan to make sure that people—this is shocking, actually, as far as I'm concerned.

I wonder what we can do at this point in time to protect both those people who have already appeared and said some things on the record here today and those who might appear this afternoon or across the province over the next three or four days. As you must have gathered by now, this is pretty litigious stuff that we're into here. There are a number of dynamics at play that are reasons we are dealing with this piece of business. It requires some further clarification.

The Acting Chair: I share your concern. The table has been monitoring coverage of this and called in to indicate that that should be read into the record. It's their view that—

Mr Martin: Who provided that statement for you?

The Acting Chair: Perhaps I could ask the clerk to speak to this.

Clerk of the Committee: It's a document prepared internally within the committees branch. It has been prepared with reference to other witness situations, and sometimes it's when witnesses are compelled under oath or called as opposed to volunteering to come forward.

The committee had discussed it and agreed that one of the protections we could afford is that when people requested it, the committee was willing to consider such things as going in camera and hearing witnesses in camera. But as the statement reads, my understanding is that parliamentary privilege has been extended to witnesses in committees, but again it's something that hasn't been tested in court and that's why the caution has been advised to be read out.

Mr Martin: Are you OK with that?

Mr Sterns: I'm content to keep my submission going, with that caveat in mind.

Just to recap where I was before, the relationship was built on trust. The agreements were minimal. Everything went just fine. That was back in the salad days of franchising when you couldn't get somebody to sign a 60-page agreement with an unknown quantity. However, as the relationships progressed, the agreements became extremely complicated. Franchisors started realizing the magic of the franchise to them, which is that it's a very flat pyramid. The power and the money flow to the top. The risk, all the ventured capital, goes to the bottom, to the franchisees. While the perfect franchise system is a partnership, as you may have heard by now, in reality what you see again and again are the conflicting interests, the conflicting positions. This all feeds into the problem with Bill 33: How does it address the inherent conflicts in the relationship?

The first conflict you will have heard about is, of course, the drafting of the rules of the game. The franchisor desires control and absolute profitability. These things are really the antithesis of what a franchisee often wants. He wants to be independent, to have the benefits of the franchise name but nevertheless to exercise some control.

Everyone says there's no law of franchising. There is a law of franchising. It's the law of the contract, a 60- or 70-page agreement supplemented by a general security agreement, supplemented by a sublease, supplemented by trademark agreements and so on and so forth. So there is plenty of law. The problem is it's all written by one side; it's all written by the franchisor. Yes, it's a contract. Yes, the franchisee signs it. Sometimes some negotiation takes place back and forth, but in essence the agreements are presented as done deals. The true heart of the agreement is rarely open for negotiation unless the system happens to be very green, trying to bring people in. The argument you often hear on the side of the franchisor is: "We have to have consistency across the system. We can't give this to you without giving it to this person, and the next thing you know, I lose my system." That's how we get into these ridiculous agreements, which are getting more and more ridiculous by the day.

The second inherent conflict you will probably hear about is the supply of inventory. The company store in the mining town is how these things are set up. You can only buy your flour from Pizza Pizza. You can only buy your walnuts from Bulk Barn. There is nothing distinctive about the products that many of these franchisors are selling, and yet they are maintaining an absolute monopoly over the sale of the products. They are charging monopolistic markups on these products, which is how you get into the situation where you sell millions of dollars of product a year and lose money with every doughnut you sell or what have you. Of course the less money you have at the end, the less you can afford a lawyer to fight. So there is that consistency.

The third inherent conflict is encroachment, again a conflict of interest. The franchisor wants to maximize its presence and often has very good business reasons for wanting to do so. But the franchisee wants to maintain a certain radius of protected territory, and that's often not afforded to them. So you see these guys setting up across the street from each other.

Have the courts resolved the conflicts? Unfortunately, the opportunity to do what this act is doing came before the Supreme Court in 1973. You've had a chance to look at the Grange report, which your predecessors wrote. There was reference to this case called *Jirna*. *Jirna* was going to be the case that was going to decide how things were going to go with franchising. It was going to go before the Supreme Court. The lawyer for the franchisee in that case, Marvin Catzman, testified before the Grange committee. He said, "Hey, we might win this case, in which case the Supreme Court will say that franchisors owe this fiduciary duty" and all this great stuff. I'll give you the conclusion of that case. The franchisee lost, and in a big way. Unfortunately, the Supreme Court said that a franchise agreement is really no different from any other kind of agreement. It's a commercial contract; the parties are at arm's length; the parties are sophisticated; why else would they be signing these agreements? Therefore, no special duty is owed, no special duty of care, no fiduciary duty, nothing. Basically it's dog eat dog, except

that the Supreme Court forgot to say that it's really dog eat goldfish. That's been the paradigm of franchising since *Jirna* and since the Grange report.

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I'd like to talk right now about Bill 33 and what it does to address that.

I agree with what John Sotos is saying, that two of the three goals this act set out to achieve are met. Freedom of association: Who can argue against that in March 2000? Disclosure: Again I think that's a bit of a given. You tell people honestly what they're getting into. Don't sell them a bill of goods.

But the very first thing that the long title—I keep calling it the Franchise Fairness Act. It's a bit of wishful thinking on my part. I'd hope that this committee would hear that and say: "That makes sense. That's a nice sound. Why not call it the Franchise Fairness Act?"

If you look at the long title, the three goals, fairness, assembly and disclosure, what comes first? Fairness. Everything flows from the fairness obligation, that the franchisors are to be fair; fair in terms of allowing the franchisees to assemble, fair in terms of the disclosure. It should be called the Franchise Fairness Act. Nobody should be afraid of that.

There are three problems essentially with the way section 3, dealing with fair dealing, is drafted. First, it's vague and uncertain. It has been studied. I don't know if the franchisors who have come before you today have told you that. There has been a lot of ink spilled over this idea of fair dealing, what it means. The consensus is that it's an empty phrase. It's as empty as the CFA's code of ethics, which says that franchisors owe a duty to be fair to their franchisees. That has been easy to get around. It's easy, because if you ask the franchisor, "Are you being fair?" they say, "Yes, of course we're being fair." Fair to whom? That's the question. That's what the law doesn't answer. That's what the courts are going to have to say. If you look at the terms of section 3 right now, there's one thing that jumps out at you: fair dealing. In law, you always hear "good faith and fair dealing." They go back to back. They go together like salt and pepper.

Where is good faith? The Legislature has decided to give only the yin without the yang, and there will be a lot of ink spilled over that. Why didn't the Legislature put in "good faith"? It must mean something. It must mean that they didn't really mean what they were saying. Anyway, it's fraught with difficulty.

The second problem, as I have already alluded to, is the test. Is it fair according to the franchisor or fair according to the reasonable person, the man on the Clapham omnibus, whoever the person is who looks at things and decides whether they're fair or not, the impartial third party?

The smart money is that fair dealing is a subjective test to be decided according to either the franchisor in question or according to the franchisor's peers, the ones who've gotten us into the situation, the ones who have caused this Legislature to have two committees in 30 years to study the abuses in franchising. Are we going to

let them decide what's fair and what's not fair? They can't be trusted; they can't do the job. It's for the Legislature to tell the courts how to interpret this, based on this committee, based on what's being said here by all sides in the open. Courts don't allow you to have a royal committee. They are just: "What does the contract say? Did you sign it? Are you 18 years old?" All the rest of it rings hollow in a court. This is the opportunity the franchisees have been waiting for, to say something that's going to resonate with the courts.

Going back to what I'd said at the beginning, the test has to be reasonable, the test has to be objective and there has to be enforcement. The Ontario Franchisee Coalition supports what John Sotos says in terms of the test being commercial reasonableness. That is a term which we're very familiar with in law. It's not an unknown quantity. It's not coming from out of the blue. It's the test you impose on the person who has the ability to affect someone else's property. It's the test that you use.

If your mortgage company takes over your house because you're \$10,000 behind in your mortgage, it cannot accept \$10,000 for your house; it has to accept fair market value. It has to do what is fair and reasonable in the circumstances. It has to list your property. In other words, without saying that the bank has to do A,B,C,D and E, it just says it has got to act in a commercially reasonable way. It doesn't say the bank has to be fair according to what the bank thinks is fair. That's the test we're advocating here for this law. It's simple, it's elegant, it says what I think the Legislature wants to say. So, sober second thought test, it imposes no red tape, it simply puts the franchisor to the test and says, "Do you really think what you're doing is fair and reasonable?"

In conclusion, we support what John Sotos is saying in terms of the tenor of section 3, how it can be improved. From the franchisee coalition standpoint, the name of the act should be Franchise Fairness Act because everything else flows from that.

Mr Chairman, honourable members, ladies and gentlemen, I'd like to thank you for this opportunity to speak, and I'd certainly be pleased if any of you had any questions.

The Acting Chair: Except that there isn't any time left in the 20 minutes.

Mr Sterns: Oh, I'm sorry. I had a feeling I might have gone over.

The Acting Chair: I did pause during our procedural bit. I'd like to thank you for your presentation and once again apologize for not having read that to you earlier. I apologize for that on behalf of the members of the committee.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Acting Chair: I'd like to call on the next presenter, Judith Andrew from the Canadian Federation of Independent Business. Welcome to the committee.

Ms Judith Andrew: I'm Judith Andrew, vice-president in Ontario for the Canadian Federation of Independent Business. The CFIB, on behalf of our 40,000 Ontario small and medium-sized member firms, appreciates the opportunity afforded by the standing committee on regulations and private bills to comment on the Ontario government's proposed franchise legislation.

You have kits before you that contain this statement as well as a number of other pieces which are the research that we've conducted over the years with our members on franchise operations.

We are pleased to count among our Ontario membership some 1,500 independently owned franchise operations. Our member concerns and issues, which come to us via letters, calls, e-mails and in person during our personal visit at the member's place of business, are the basis for our research on public policy issues. As early as 1981, CFIB was conducting an in-person survey on the impact of the franchise phenomenon on our members' businesses. In a 1984 mandate vote—and this is the vehicle that sets policy for the organization—34% of our member respondents favoured legislation protecting franchise dealers, while 57% opposed such legislation. Over a decade later, in 1995, it remained at one third of members favouring the Ontario government passing legislation to protect franchisees, but the opposition was less pronounced, at 48%, with the remainder undecided or having no interest.

In 1995, we conducted a survey on retail and service firm issues—it's in your kits—entitled New Signs on Main Street. Inside the page you'll see a large section on franchises, which identified the advantages of franchises, the level of satisfaction with franchise arrangements among the respondents and also the problems encountered with franchise contracts.

Among the leading advantages were: advertising, buying-group discounts and consulting advice. As at April 1995, 17% of the respondents to this survey indicated dissatisfaction, including 5% who were very dissatisfied with their franchise arrangements. The most-identified problems included the high cost of continued services, the contract being too one-sided and the lack of marketing support.

CFIB is pleased to contribute to the current debate data from our 1999 CFIB Focus on Ontario survey, and the survey questionnaire is in your kit. This survey explored small and medium-sized business support for various possible elements to be included in the Ontario government's franchise legislation.

Figure 1 in the statement shows the main results from some 2,700 business respondents across the province. Also, broken out separately, are results for the 160 or so franchise operations which responded to this survey.

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It's important that you note that at this point only one quarter of the respondents marked "none of the above," which we see as a measure of those who continue to believe that no legislation is necessary. So there has been an evolution over time from over half thinking no legis-

lation is necessary, now down to just a quarter of small businesses in the province that think that is the case.

Our Ontario members indicated strongest support for legislated fair dealing between franchisors and franchisees; also for advance disclosure of facts and documents bolstered with heavy penalties for violation of disclosure rules and for misrepresentation; as well as for the legal right of franchisees to associate with each other without penalty.

Among the franchise respondents, you can see from figure 1, support is even stronger for the duty to deal fairly and for strong, upfront disclosure provisions and an ability to freely associate with other franchisees. Franchise respondents, being more sensitized to the down-the-road issues, also indicated support for legal blocks to franchisor termination.

CFIB has learned of impediments put up by certain large national franchisors to independent business franchisees associating or speaking out on issues of major concern in their industry. One tactic is to centrally control franchisees' payments, preventing independents from financially supporting associations of their choice.

Another concern which has come to our attention is where so-called mature franchisors no longer need the franchisees to expand their market presence, and their real agenda is to reduce the number of franchisees or eliminate them altogether and replace them with their own corporate operations. Our franchise members also gauge this to be a problem, according to their 50% support of legal blocks to franchisor termination of the contract.

Our three recommendations:

(1) CFIB recommends that the Ontario government proceed with legislation which includes the favoured elements of duty of fair dealing, required disclosure bolstered by penalties and the right of franchisees to associate.

(2) We oppose any broad-based exemption provision for franchisors from the terms of the legislation. There is one exemption provision that is proposed.

(3) Given concerns about non-renewal or termination of franchise agreements, CFIB urges the government to establish in legislation a fair framework to handle these circumstances—to include such things as a notice period and fair compensation as well as just cause—and a timely, low-cost method of resolving those disputes.

That would be an addition to the legislation as proposed.

We appreciate the opportunity and would be delighted to attempt to answer your questions.

The Acting Chair: We've got quite a bit of time for them. We'll start with the parliamentary assistant, please.

Mr O'Toole: I'll share time with Mr Gilchrist.

Thank you very much for appearing before the committee. I'm very interested in that a couple of previous presenters indicated there are very few accumulated statistics on the success or failure of small business start-ups and/or franchises. You might want to comment on that.

In figure 1, I was very pleased that the top four responses there seem to be, at least at this point, satisfied by Bill 33; that is the fair dealing aspect, disclosure and the association right.

Would you like to respond? You think that it's difficult to find a balance, as you've said here, but in your view and in the view of your membership, is this a piece of legislation that will satisfy some of the balance that's required in this growing sector of our economy?

Ms Andrew: I would say yes. The legislation certainly responds to the four elements that draw the strongest support from our members in terms of their views about what ought to be included in it. The votes we've had over the years, of course, argue on the other side, that franchise agreements are private business deals and so forth, and that if there was consultation with legal and other advisers, some of the problems can be solved.

Yet our members are now feeling that this is a special category of business. Unlike another kind of business where you might go and purchase a business operation without any special protections like this, our members are now supporting there being legislation directed at the franchise sector. That is a definite change over the years, and the four elements are very definitely there.

Some of the horror stories and the heart-rending stories that have come up suggest perhaps, in addition, things like termination of contracts without notice or fair value applied are something worth having a serious look at.

Mr O'Toole: Just to conclude, we've heard from three or four presenters about the imbalance in the relationship from the starting point, and you would see that. Is there anything in this that we could provide to level the playing field in some ways, recognizing that the franchisor obviously has the secret recipe and the other person is going to be a millionaire in two weeks? There's an imbalance of expectations. Is there anything we can do, or does the disclosure portion address most of that?

Ms Andrew: I think disclosure is a big part of it in making sure that people are given the hard facts before they sign rather than finding them out the most difficult way afterwards. Also the right to associate, if there were associations of franchisees—I was listening to some of the previous presenters and some of the heart-rending cases there. One would think, if there were associations of those people, that they also would be able to forewarn others and perhaps the kinds of practices we've heard about wouldn't be a feature of the system.

Mr Gilchrist: Thank you, Judith. It's good to see you again. You are a consistent presenter, and I always appreciate the detail that goes into your submissions. They're anything but anecdotal.

Along that line, do you have any thoughts as to why such a small percentage of your franchisees actually sent in a response? In your handout you say that 28% of your members are franchisees, but they only supplied 6% of your responses. Should we take that as a good sign, that they are not troubled and did not think it worthy?

Interjection: Too busy.

Mr Gilchrist: Or are they too busy? Exactly.

Ms Andrew: This particular survey which, due to a set of circumstances, went out in mid-July 1999, was a pretty heavy-duty survey, as you can see from your kit, and included 17 questions and some fairly difficult ones on the hard matters of property tax and the Workplace Safety and Insurance Board and so forth. We did lose some response because people didn't slog through all of those in the dog days of July. I suspect that's what happens sometimes. We get good responses from our members and we check regularly to make sure it's not the same members responding all the time. To be honest, independent business people are very busy with their businesses and often pressed in vacation time, so our timing wasn't great on this one and that accounts for the smaller response. But still, 160 franchise operations is a substantial number.

Mr Gilchrist: Our biggest conundrum right now is the distinction you would make between the disclosure-related issues to allow a purchaser absolute certainty that what they're getting into is a known commodity, versus those things that would be considered relationship. I look at your third recommendation and I would appreciate it if you could elaborate a little bit on just how far down the road you thought the government should intervene in things such as termination of contracts. Would it not be more consistent with traditional contract law to just make sure that all of the parameters around which a franchisor could ever terminate your contract are spelled out in advance in extraordinary detail, including any penalties or any claim the franchisee might have for frivolous termination? Would that not be better than the government trying to micromanage a myriad of different businesses via regulation or legislation?

Ms Andrew: We weren't really thinking of government micromanaging this. You've probably noted from the survey that our members don't favour government registration, nor do the franchise respondents to the survey favour that kind of heavy-duty legislation. But there seem to have been enough cases where franchises are terminated with very little notice, really with not sufficient provision for the business person to get compensation, or for reasons which perhaps wouldn't be just cause that we think there need to be at least some basic rules around that.

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Mr Gilchrist: But again, should the rules be laid out up front? If before I sign the contract I know the franchisor has the ability to terminate under the following five conditions, and that is one of the five conditions they do terminate me on, would you not agree that is quite consistent with the sort of contract law that is best left to the courts to enforce and interpret?

Ms Andrew: This obviously bears more thinking, and it's excellent that the committee is looking at this bill at first reading stage, because it does give you some time to consider provisions. But if it were at least included in the contract that the contracts must address these things or some minimum parameters around them, perhaps that

would suffice. There are others here who deal with these kinds of situations probably more frequently than we do, who could give you very detailed advice on that. But we think there needs to be something that addresses this. Otherwise, if you are cited for a minor health violation in the city of Toronto and suddenly that's a reason for the franchisor to terminate your contract, there needs to be some protection on that front.

Mr Gilchrist: Fair enough. Thank you.

Mr Martin: Thank you for coming. This is indeed an important piece of work that we are all involved in. You're right: It's opportune that it is after first reading, so we can look at the bigger context within which this all unfolds and perhaps do something in the end that might work better.

We had a presentation this morning from somebody who is an expert in the American experience, who talked about some of what is in this bill as what they introduced 30 years ago. They have evolved since then to have legislation in place that actually deals with the question of termination, as you have suggested, and calls, in many jurisdictions, for some registration of the franchisor/franchisee and of the disclosure document, so there is some control over the question: Is it complete, is it correct, and whether, even with the disclosure, there is still misrepresentation going on.

That gets us to the end point, where in some instances we have terminations taking place, or a change in the contract that puts undue pressure on the franchisee and requires the franchisee to expend even more money to hire a lawyer, go to court and fight that kind of battle. Many franchisees just don't have that kind of money available to them. As well, of course, it interferes with their ability to carry on business if they are preoccupied with that kind of thing.

With that in mind I ask you, would the provision for termination, where you are calling for some basic rules, be the same thing we are referring to, some kind of dispute resolution mechanism? There were three small businesses in my own community of Sault Ste Marie—that's the reason I'm involved in this—who brought me to the table to share with me the very difficult circumstances they were facing, and they ultimately lost their business. They weren't bad business people; they were actually very successful, good corporate citizens. But at the end of the day, they are not in their stores any more. They were saying to me that if there were a table they could go to where arbitration or mediation could happen, so that the stories of each side could be told and a judgment made so that everybody could get on with their life—they were convinced they were doing all the right things, and they were asking for a dispute resolution mechanism. Is that in keeping with what you are thinking about, in this instance, regarding a termination clause?

Ms Andrew: Certainly the CFIB has supported the notion of mediation. In fact, when former Attorney General Charles Harnick brought his mandatory mediation thrust forward, that was something we did support for those very reasons: that many small businesses can't

afford the time and the cost of long-drawn-out court proceedings, and hopefully it would be better to resolve disputes as early as possible, possibly through mediation. So we think mediation is a good idea in a whole variety of areas, probably including this one.

In terms of heavy-duty provisions in this area, I think the general tenor of these responses is that our members believe there should be strong, upfront disclosure. I don't think they are quite ready for a highly regulated environment with registration. Certainly registration is not supported. In fact one very thoughtful respondent answered yes to many of these things and said, "Of course we will be paying for all this government regulation." Quite clearly, it is true that the more oversight there is of these kinds of dealings—you know, more government costs, more tax dollars and so forth. We are in support of some clear parameters under which franchises are operated, but at this point we certainly cannot go for the really heavy-duty kinds of proposals with a highly regulated system in this province.

Mr Martin: Could I suggest to you, ever so respectfully, that you might want to take a look at some of the material Susan Kezios presented this morning. You may already have read some of the material her organization is putting out, which suggests that even in the States, where the regulation is much further developed and helpful, in the end it's still not enough because you're still before Congress looking for better legislation to regulate it. She figures that what is on the table in Ontario is what they put on the table 30 years ago. I guess I'm saying, should we be playing catch-up that far behind and should we be, as I suggested and she suggested this morning, maybe 10 or 20 years from now looking at what they are looking at right now? Do we always have to be so far behind, even in this instance, where the US is concerned and even in the regulation of business—

The Acting Chair: I think I heard a question there, Mr Martin. I'm going to need to—

Mr Martin: Actually you didn't hear a question. I'm going to share with you—I have been inundating the committee today with all kinds of research that I have been doing. I think you're right: This affords us a unique opportunity after first reading to do a fulsome study of this whole issue.

Gillian Hadfield, who will appear before us—

The Acting Chair: Question, please, Mr Martin. It's that plane to Sault Ste Marie I'm worried about.

Mr Martin: Yes. Gillian Hadfield will appear before us in Ottawa on Thursday and will be making some interesting presentations. I suggest you might want to take a look at that too. Here are two papers she has put together that I think would be good reading. I'm going to share them with the rest of the committee. One is *Problematic Relations: Franchising and the Law of Incomplete Contracts*, and the other is in the area of how the market for lawyers distorts the justice system. Franchisees, in many instances, just cannot afford the legal fees to fight the battles that they need to fight.

The Acting Chair: Ms Andrew, if you heard a question there, you are welcome to try and respond to it. Otherwise your time has expired.

Ms Andrew: Just a quick comment. Franchise operations are, of course, one way to conduct business in Ontario. There are many other business people who start businesses, who buy businesses, who put a lot of effort into researching what they are doing and making sure they have done their due diligence and so forth. I think it would be unwise to go for a disproportionate, heavy-duty regulatory environment around the one way of doing business, that is, the franchise side of it, because there are many other small business people in Ontario who put their homes and everything else on the line in terms of their investment in business. They have to choose who they deal with carefully, just as you do in a franchise operation.

The Acting Chair: Thank you very much for your presentation today.

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ED BARGE

The Acting Chair: I'd like to call the next witness, Mr Ed Barge. Welcome to the committee, sir. You have 20 minutes for your presentation.

Mr Ed Barge: Good afternoon, ladies and gentlemen. Mr Les Stewart from the Canadian Alliance of Franchise Operators made contact with me some two weeks ago and asked me if I could relive my experience in the franchise world, which occurred in the year 1989-90. At the time I didn't think it was relevant, because I hoped that things had moved forward, that maybe some of the problems my particular industry had trouble with back then had been rectified and perhaps governments had had a look at things and decided that perhaps there should be changes and there should be some kind of legislation put in place. Having said all that, it seems that that hasn't happened and at least Bill 33 seems like a step in the right direction. What I'd like to do is give my background to you and take it from the point when I got out of the franchise business.

Prior to becoming a franchisee, I had spent a total of 18 years working for a large supermarket company in the United Kingdom. In this period of time, I rose from a trainee manager to the position of regional director. As a regional director, I was responsible for a total of 50 supermarkets with a total of 1,500 employees. Sales were in excess of some \$250 million per annum.

I left the corporate world and decided to start my own business. During the next 15 years I opened and operated five separate and different businesses. My combined sales were in excess of \$25 million. These businesses were all retail operations, ranging from a supermarket to two frozen food freezer centres, a wines and spirits operation and a health and whole food store. All were opened from scratch by myself and all had managers appointed to run them. A total of 55 staff were employed by my company.

This was also a hands-on operation, which meant that working long and hard hours was the norm, not the exception. In 1989, for personal and family reasons, I decided to return to my native Canada to investigate what opportunities there were for starting a new business. I sold my five retail outlets as going concerns and set up home here in Ontario.

The franchise route: I had always enjoyed travel and decided to examine the travel industry with the possibility of entering this profession. The main thing I liked about the travel business was that there was no physical stock to worry about, as in my previous five retail outlets. Shrinkage and stock loss was previously a big headache. As I had no experience whatsoever in the travel business, had limited computer skills and no idea of the rules and regulations as they applied to the Canadian travel industry, I decided to go the franchise route.

The thinking behind my decision was as follows:

(1) There would be training and support for my business, (2) there would be brand recognition by the public, (3) there would be corporate advertising, (4) the risk factor for failure would be substantially reduced, (5) you would not be on your own.

I applied and received a prospectus and a franchise agreement. I took the franchise agreement to my lawyer for vetting, and I checked and rechecked the prospectus projections, both the set-up costs and income forecast. I then visited a total of five existing franchisees to ascertain how well or otherwise they were doing. The information at the time seemed positive enough, but much later I found out why the true state of their franchises was not revealed.

My lawyer advised me that the agreement was totally loaded/slanted in the franchisor's favour, and that if I were to fail, there would be no comeback to the franchisor. There were no guarantees implied or given for the accuracy of the projections and no recourse if these calculations proved inaccurate.

As for my business experience, after checking the projections given by the franchisor, it was plain that if I was to make a reasonable living in this industry, I would need to own and operate more than the one travel agency. I therefore decided to open two to begin with and reserved a third site for the immediate future.

This particular franchise operated on the basis of buying out existing independent travel agency owners and then having the site refurbished and opened as a franchise store. The person who was bought out would continue to work with the new owner for an agreed period of time and would assist in the operations of the new franchised outlet.

It really did seem like an ideal set-up, but it quickly became apparent that the so-called goodwill and customer base you were buying could not be determined once the sale had been completed. The main assets, really, were the trained staff, the travel industry licences and the actual site or location of the agency. The customer base, the goodwill, the equipment, the furniture, the fixtures and fittings were all useless, and yet there

was a substantial cost to the franchisee in paying for these useless features.

What you had was this: You paid for the franchise fee. You paid the owner of the travel agency you were buying, in order to have the site, the licences, the goodwill, the trained staff and the customer base, and then you had to pay for the refurbishing of the site, all the new computer equipment, the furniture, the stationery supplies and, finally, the fixtures and fittings necessary to open the new business.

When you did all this and paid for all this, you then found out that the customer base and goodwill that you had purchased did not come anywhere near what you were led to believe.

The franchise experience—my own personal experience: The cost overruns of opening my one travel agency were in excess of some \$80,000; the sales forecasted by the franchisor of the two travel agencies to make a profit or return on the effort were never achieved; the costs of operating the two businesses were far higher than were projected by the franchisor.

In my own experience, you had a triple whammy to contend with: higher costs to open the franchise than you were led to believe; higher costs to run the business than you were led to believe; lower sales and revenues than you were led to believe. The break-even figure projected by the franchisor was totally inaccurate.

Please bear in mind that the average gross profit in the travel business back then was between 10% and 12% gross, so there was very little margin for error if your costs were higher than projected or if your gross profit did not manage to achieve the industry average. It did not take me long to determine that I needed \$1.5 million in sales per year per agency just to break even and not the \$800,000 in sales volume that was projected by the franchisor. Remember, \$1.5 million in sales was to break even, not to move into profit.

Part of the franchise concept was that you were not alone. Back in 1989-90, it soon became apparent that all of the franchisees in the greater Toronto area were in the same boat, and all of our boats were sinking fast. There was a total of 15 franchisees who were slowly going under and were in danger of losing everything. There was a total of two franchisees who were actually making a go of it, but even those two were not achieving the financial success that brought them into the franchise world.

A class action lawsuit was launched on behalf of the franchisees against the franchisor, citing unrealistic/unobtainable sales and revenue projections and understated operating costs. Each franchisee eventually settled on an individual basis with the franchisor. In part, one of the main planks of the settlement was for the franchisor to find another victim to purchase the failing business in order for the franchisee to recoup some of his losses. The cycle then would continue.

All 15 of the franchisees went out of business and most, like myself, lost not only one's life's savings but one's home and ended up without an income or employment. In my case, my total financial loss exceeded

\$250,000, not counting the loss of my home later on in the same year. My business operated for a total of 17 months before going under and, needless to say, the third location I had planned to open never occurred.

Lessons to be learned:

(1) You can have all the business experience in the world but if the site is wrong, the structure or set-up isn't right, the sales projections are not right, the operating costs are not right, and the formulae/mix of the franchisor isn't right, you are going to fail.

(2) The 15 individuals who failed and lost everything came from a wide spectrum. Some were recent immigrants, some were business professionals, some were inexperienced, some were lazy, some worked around the clock, one was an experienced police officer, one an experienced airline pilot. The truth is all of them failed.

(3) The franchise agreement is totally loaded to the benefit of the franchisor. If the franchisee does not succeed, there are ample reasons the franchisor can give for this and this failure has nothing to do with the franchisor. The franchisee is, at the end of the day, on his own if the operation does not succeed.

(4) If the sales, operating costs and net profit projections made by the franchisor are incorrect from the beginning, the chances of overcoming the problem are slim and next to none. There is no recourse to the franchisor for his inaccurate projections outside of taking legal action.

(5) By the time the franchisee realizes he is doomed to failure, he has used up all of his financial resources to keep his business afloat and has nothing left to hire a specialist lawyer to fight the franchisor.

(6) The concept of buying out a business in order to have a immediate client base has proved to be a disaster in the travel business. The franchisee is far better off finding a good location and opening it from scratch. The franchisor uses this notion of having an immediate client base to provide assurances to the franchisee. In practice, however, this concept is wholly false.

(7) There should be some recourse available to the franchisee if he or she can prove that he or she is doing everything that is expected of him or her and yet cannot succeed in achieving the projections that he or she has been told are obtainable.

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In conclusion, after my failure in the travel business—my only business failure, I might add—I have not yet been able to become financially secure. In fact, I am still paying off debt directly caused by this failure. Declaring personal or business bankruptcy should be seriously considered by those franchisees who experience failure. My own failure resulted in the loss of all of my retirement and insurance plans, my home, my car, and a strain on my marriage that is present to this day. In my case, I did not declare bankruptcy.

I am not bitter about my situation. But if an experienced, hard-working businessman can fail, what about the individuals who do not have their eyes wide open at the beginning?

Of the 15 franchisees who failed just in the greater Toronto area, I have kept in touch with two over the years and both have not recovered from their business failure either. I suspect that the vast majority of the other 12 find themselves in the same position.

I do not know the answer for regulating the franchise industry, but I do hope that this committee can find the right approach to, at the very least, give the franchisee some protection if he knows that no matter how hard he works, how many hours he puts in or how much money he uses to support his business, he isn't going to succeed.

The Acting Chair: Thank you very much. I see an interest in questions.

Mr O'Toole: Yes. Mr Gill and myself have questions. Thank you very much for bringing your story to the committee. The purpose of these hearings is to put the real face on the story of the franchise business. I commend you for sharing sincerely your experiences. It must be hard, even now, as you review and revisit. I can only assure you that I know we want to do the right thing. The lessons to be learned: You listed in number 1 the right site, the right this and the right that, that take some sense of judgment. The franchisee is at some disadvantage—we've heard that mentioned a couple of times—a fairly trusting relationship, while anticipating success. That's a difficult thing to regulate.

Mr Barge: I appreciate that.

Mr O'Toole: What can we do to strengthen the disclosure portion? I think the most central piece to this whole thing is disclosure at the time of the agreement. Are there any comments you have on that?

Mr Barge: Again, I can't speak for other industries, but the travel industry is very cyclical. So it depends entirely what time of the year you would actually get into it. If you went into it in a quiet period, for argument's sake, then the franchisor could be justified in saying, "Don't worry, the busier time is just around the corner," or "It's down the road in two months' time."

I have no idea what time frame you intend to put on having this whole discovery—but the ability to go back to the franchisor and say: "Look, you projected certain figures here. They're not achievable. I'm doing everything I can do. What are you going to do about it?"

Mr Gill: Mr Barge, thank you for sharing the information because I'm sure it's still tough, even after so many years, and many of the people would have not shared it. Many of the people who have lost and had this experience would have gone away and paid their debts. First of all, I want to thank you.

Second, I think the case in point comes to something Mr O'Toole mentioned earlier. Some of this business, and I do understand a bit of the travel business, is changing so quickly, ever since you've been in business, with the e-commerce and with the airlines cutting back and everything. I think sometimes when one is getting into it one does not realize how quickly some of these businesses are changing. I don't know if any of these laws could protect one against the changing environment of the new innovations. Any comments?

Mr Barge: You're totally right. They can't, with the marketplace changing as fast as it is, but there has to be a situation where you get into it. In other words, you're taking an established industry. However, e-commerce, if you decided to go onto the Internet now, you would be a very brave person to pay a franchise royalty and whatever, hoping that they're going to have a business that's going to sustain them five, six, 10 years.

Existing businesses that have been around for some time—there should really and truly be some measure of success or otherwise—are not changing directly overnight. The travel industry has changed, yes, and I dare say will change more as time goes by. But we were talking really in terms of buying an existing business that has not only a past but has got a relative future, no matter what that may be, two years, three years or 10 years. I still think the operations are based on. "Here, you pay your fee, you pay your royalty and you've got a good chance"—it's never guaranteed of course—"of success."

The Acting Chair: Mr Martin, four minutes.

Mr Martin: You've heard the proposal that disclosure will be the magic bullet that will solve all the problems. I don't suggest for a second that's what any of us here think. Businesses will succeed and fail no matter what we do. I think what we want to do is create at least a level playing field, a fair shot, so that if you work hard and you do the right things, you have at least a decent chance of making a living and protecting your investment.

What could we do, here, now, with the material we have in front us—you've heard some of the deputations that have gone on here—to make sure there is fairness in the system and that people have a fighting chance at making a go of it and actually being successful?

Mr Barge: Fair question. From my experience and being in business fairly recently, there has to be some kind of arbitration. There has to be an independent panel. Don't get me wrong, the franchisor in most cases is probably a decent operator and a decent company, but he has to look at the greater picture. The franchisee is looking at his own little empire and he's obviously quite concerned about that. The franchisor looks at it and says, "If I do something here, if I bail this guy out or if I agree to buy into his company or take one of his two outlets over, whatever, this leaves the door open and I'll lose my focus."

There's nowhere you could go, if both sides thought they were doing their level best, to say, "OK, who's right, who's wrong?" or maybe not even that: "OK, this is the situation that both of you people are in, the franchisor and the franchisee. What is most fair? What is an answer?" How can we put something together that both parties have something to work with, as opposed to the franchisor taking the position, "I'm strong, you're weak, and I'll survive and you won't." Nothing has changed from what I've heard here today. That's the same basis they're still using.

Mr Martin: I get the feeling from what you're saying that the focus on disclosure, as far as it goes, will not do the whole thing.

Mr Barge: It would set it up to begin with. In other words, you'll know what you're getting into to begin with, but changes will occur. Let's say, for argument's sake, there is a change in the business. Should the franchisor really and truly just say, "Sorry, chum, your enterprise is no longer viable. Goodbye"? I don't think so either. There's an element of fairness. If the franchise fee was paid and he was paying his royalties and he was doing everything by the book, why should the franchisor just abandon the franchisee? I don't think that's fair.

The Acting Chair: Thank you very much.

CANADIAN BAR ASSOCIATION—ONTARIO

The Acting Chair: Our final public presentation this afternoon is Frank Zaid from the Canadian Bar Association—Ontario, business law section. Welcome to the committee, sir. You have 20 minutes, plus whatever time it takes you to pour a glass of water.

Mr Frank Zaid: Mr Chairman, honourable members of the committee, I'm here on behalf of the business law section of the Canadian Bar Association to speak on Bill 33. I will take a very short period of time to give you a bit of my own personal background. I've been in the private practice of law for nearly 30 years, specializing in franchising, both in Canada and internationally. I have been the part owner of two franchise companies. I'm the part owner of three franchisee units. So I've had business as well as legal experience. I've written, spoken, testified and given papers on franchising throughout my career.

However, for the Canadian Bar Association, since July 1971, when the Grange report was issued, by our calculations there have been at least 11 ministers or representatives of ministers in various public forums who have spoken on the subject of franchise legislation. In the written report that I tabled with the clerk, we went through some of that history. The fact is that over the past 30 years this subject has been hotly debated. It has occupied a considerable amount of public and private debate, time and consideration and has created a great deal of uncertainty in the Ontario marketplace as to whether, when and how franchising will ultimately be regulated in this province.

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We believe this debate must come to an end and come to an end quickly. It has been demonstrated through every speech or public pronouncement, commissioned study or survey that disclosure legislation is highly desirable. It has been further demonstrated, in the same manner, that registration legislation is contrary to both the public and private goals of establishing a free marketplace environment for business-to-business relations. The fact that Alberta determined in 1995 to repeal its Franchises Act, which had been in force since the early 1980s, with new legislation which provided for certain principles of conduct and disclosure only requirements, further exemplifies that the one province in this country having had franchise legislation chose to deregulate the

process and to abandon government registration and review of prospectuses and agreements.

The Canadian Bar Association of Ontario supports the introduction of Bill 33 in its present format on the basis of disclosure-type legislation, with a legislated standard of fair dealing, freedom of association for franchisees and delivery on a timely basis of a prescribed form of disclosure document.

The Canadian Bar Association of Ontario does not support the introduction of relationship standard legislation dealing with various contractual matters typically found in franchise agreements for the following reasons:

(1) There is no specific industry standard applicable to all franchise agreements. It is impossible to determine a set of legal standards which will apply on a uniform basis to the various types of franchises and industries involved in these relationships.

(2) The level of sophistication of franchisors and franchisees is widespread and varies among franchise industry classifications. Sophisticated franchisee investors do not need the protection of relationship standard legislation. Unsophisticated franchisees will benefit far more from education, government publications and franchise associations informing them of the need to be properly financed and advised by legal counsel. Relationship standards will not cure the typical difficulties encountered by unsophisticated franchisees.

(3) Relationship legislation will spur costly and unnecessary litigation. Any time contractual standards or the like are determined by legislation, uncertainty prevails and interpretation disputes arise. While the intent of such legislation may be to assist franchisees generally, the result will be increased litigation, uncertain relationships and additional burdens and costs on the legal system and the province's budget.

(4) Franchising creates economic activity in the province which will be curtailed by excessive regulation. As has been demonstrated in the United States, certain states which have enacted relationship-type legislation found that the economic thrust of franchising withdrew from their states. I give you as an example Iowa. States like Michigan, which introduced very heavy-duty registration-type legislation, experienced an immediate withdrawal of franchise activity in the state, and they ultimately repealed that legislation.

(5) Adequate remedies already exist. Most franchise disputes are focussed on factual matters. Issues of negligence, misrepresentation, non-performance, system standards, unconscionability, misappropriation, the usual legal jargon, whether alleged against a franchisee or a franchisor, are already adequately dealt with by existing common-law, contractual or tort principles and equitable and legal remedies. There is a body of common law developing in these areas as they apply to franchising upon which the legal community may rely in providing advice to franchisors and franchisees and in seeking remedies. It is not necessary for government to override these established principles by enacting legislative standards.

(6) Disclosure legislation is satisfactory. The CBAO believes, with several drafting exceptions which I'll try to run through quickly, that Bill 33 is well drafted and creates little uncertainty for franchisors, franchisees and their advisers. Of course, this is subject to a full review and public debate on the regulations which ultimately will be proposed.

(7) Erroneous assumptions: The Franchise Sector Working Team report stated that there were estimated to be 500 franchisors and 40,000 franchisees in this province. It estimated that there were 5,000 civil cases filed every year relating to disputes between franchisors and franchisees. If you apply some of these numbers, you will find that with 40,000 franchisees in the province and 5,000 civil suits filed every year, that would mean that one eighth, or 12.5%, of all franchisees in the province are involved in new civil lawsuits every year. It would also mean, based on 500 franchisors in the province, that every franchise system, on average, is involved in 10 new lawsuits every year with its franchisees. We seriously question the veracity and the accuracy of these numbers.

Based on research which I personally do every year in giving an annual address on the state of franchise law in the country, we estimate that there are 25 to 30 reported judicial decisions throughout the country—let's assume Ontario has half of those, or 15—involving preliminary or final issues determined by the courts. While it is difficult to extrapolate how many cases must be filed in order for there to be 15 reported decisions each year in Ontario, it certainly appears unlikely that 5,000 civil suits are commenced annually to result in only 15 decisions.

The eighth reason for it not supporting relationship legislation is a uniformity issue. Franchising is within the mandate of the provinces under the Constitution Act. We already have legislation in Alberta. It is highly desirable that Ontario's legislation be consistent from a legal perspective with that in Alberta unless there are other circumstances dictating the contrary.

We recommend that the regulations which will determine the form and content of the disclosure document be consistent with that in Alberta in order to preserve harmony throughout the country, and that any inconsistencies be minor in nature so that stakeholders may prepare their documents on a national and consistent basis.

Now I will turn quickly to some drafting issues we hope to help your committee with.

The definition of "franchise": In master franchise relationships, the necessary element that goods or services distributed by a franchisee be associated with the franchisor or the franchisor's associate's trademark may not work because in many cases the trademark is of a third party, ie, the franchisor from another jurisdiction. So that definition is somewhat flawed.

With respect to the inclusive portion of clause (a)(ii) of the definition of a "franchise", when referring to a "franchisee's method of operation," it is stated to include "building design and furnishings, locations, business organization, marketing techniques or training." We wonder what the effect would be on the definition if one

of these elements was not included. Would the definition fail?

The definition of “franchisor’s associate” is too expansive. Use of the terms “significant operational control” and “continuing financial obligation” will create uncertainty as to the scope of exposure of affiliated companies.

Further, if a franchisor is incorporated as a private company, which is usually the case, individual liability may be imposed without it specifically being provided for by the owner or by the person directing the affairs of the franchisor simply because of that person’s direct involvement, to use the words of the definition.

In the application of the bill in section 2, exempting single trademark licence arrangements only, we suggest that that exemption should not be limited just to a single trademark licence but to similar such trademark licences.

In the concept of fair dealing in section 3, the duty is imposed on each party. Given our concerns about the application of the various provisions of the act to associates, we think it should be specifically stated that the fair dealing standard does not apply to associates.

The right to associate: We support the right of franchisees to associate. We think, however, that right should be qualified to the extent that franchisees may not disclose confidential information concerning their specific franchise system, as precluded under the terms of their franchise agreements, to other franchisees from other systems in the course of such association.

Exemptions to disclosure obligations: The exemption providing for the grant of a franchise by a franchisee should not preclude a resale of a franchise where the franchisor assisted the franchisee in locating a new franchisee. The qualification, using the words “the grant of a franchise is not effected by or through the franchisor,” is uncertain.

Electronic commerce: We suggest that the rescission rights and the effective date of notice of rescission provide for notice by electronic mail. Similarly, we suggest that the obligations to disclose also contemplate disclosure by some form of electronic means with a written acknowledgement of receipt of the disclosure document. These are similar to the proposals currently being considered by the Federal Trade Commission in the United States.

Damages for misrepresentation: We suggest the deletion of the right of action against a franchisor’s associate.

Financial disclosure exemption: The CBAO would like to reserve further comments in connection with any exemption to be prescribed by regulation with respect to financial disclosure pursuant to section 12 of the bill.

Last, self-regulation: As has been provided for in Alberta’s act, we suggest that Bill 33 contain a provision allowing for the delegation of self-regulation to a body considered capable of governing the persons involved in franchising and promoting fair dealing among franchisors and franchisees.

In summary, the CBAO submits the following:

(1) The bill should be passed substantially in its present form as soon as possible.

(2) The legislation should not be expanded to include relationship standards.

(3) To the extent possible, the bill should be made consistent with Alberta’s legislation.

(4) The concept of the liability of and obligations extending to an associate of a franchisor should be limited or clarified.

(5) The right of franchisees to associate should be qualified to the extent that the right does not include the right to disclose confidential information concerning a franchisor as agreed to in an agreement.

(6) The CBAO would like to be consulted to provide further comments on proposed regulations to be promulgated under the act.

(7) The government should consider reserving the right in the bill to allow for delegation of self-regulation to a body considered capable of governing the persons involved in franchising and promoting fair dealing among franchisors and franchisees.

We appreciate the opportunity to assist in this very important process.

The Acting Chair: We’ve got a few minutes left for questions. We’ll start with Tony Martin.

Mr Martin: Certainly, your presentation flies in the face of some of the information presented to us, particularly this morning by Susan Kezios from the American Franchise Association, who suggests other than that franchisor systems flee states where there’s good legislation. I suggest that maybe bad franchisors flee, and who would argue against that?

Were you the counsel for the Pizza Pizza franchisor?

Mr Zaid: I was one of the counsels.

Mr Martin: Were you the counsel in the Bulk Barn case for the franchisor?

Mr Zaid: I’m involved in that.

Mr Martin: You’re not the person who sent out the letters of threat to anybody who would intervene in any way in terms of that action?

Mr Zaid: I’m not going to answer that question.

Mr Martin: OK, thanks.

The Acting Chair: Further questions? Seeing none, thank you very much for your presentation.

That concludes the public element of today’s hearings. As was mentioned in the subcommittee report this morning, two parties sought to speak in camera before the committee. They have been granted the right to do so. I would ask everyone who is in the room right now to please exit, save and except for the two individuals who sought prior approval to speak in camera.

The committee continued in closed session at 1543.

ERRATUM

No.	Page	Column	Line(s)	Should read:
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Legislative Assembly of Ontario

First Session, 37th Parliament

Assemblée législative de l'Ontario

Première session, 37^e législature

Official Report of Debates (Hansard)

Tuesday 7 March 2000

Journal des débats (Hansard)

Mardi 7 mars 2000

**Standing committee on
regulations and private bills**

Franchise Disclosure Act, 1999

**Comité permanent des
règlements et des projets
de loi privés**

Loi de 1999 sur la divulgation
relative aux franchises



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS

Tuesday 7 March 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Mardi 7 mars 2000

The committee met at 1001 in the Holiday Inn, Sault Ste Marie.

Clerk of the Committee (Ms Anne Stokes): Good morning. It is my duty to call upon you to elect an Acting Chair. Are there any nominations?

Mr Michael A. Brown (Algoma-Manitoulin): I nominate Mr Chudleigh to be the Acting Chair.

Clerk of the Committee: Mr Chudleigh is nominated Acting Chair. Are there any other nominations? There are no other nominations. I declare Mr Chudleigh Acting Chair.

FRANCHISE DISCLOSURE ACT, 1999

LOI DE 1999 SUR LA DIVULGATION
RELATIVE AUX FRANCHISES

Consideration of Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors / Projet de loi 33, Loi obligeant les parties aux contrats de franchisage à agir équitablement, garantissant le droit d'association aux franchisés et imposant des obligations en matière de divulgation aux franchiseurs.

The Acting Chair (Mr Ted Chudleigh): I call the meeting to order. Welcome, all, to Sault Ste Marie. Having a very benevolent winter, we can only hope we get some snow for next weekend's festivities. We are here to accept deputations to Bill 33, an act to require fair dealing between parties to franchise agreements.

CITY OF SAULT STE MARIE

The Acting Chair: Our first guest is Stephen Butland, mayor of the city of Sault Ste Marie. Your Worship, would you come forward, please. We have 20 minutes to spend together. You may use as much of that time in your presentation as you wish, and we will fill the remaining time with questions. Thank you very much for coming forward.

Mr Stephen Butland: I don't believe I will take my allotment of 20 minutes' time. I hope you don't ask me difficult questions, because I don't think I'll have the right answers.

The Acting Chair: Did you study last night?

Mr Butland: Yes I did. Actually I was at this at 7 o'clock this morning.

First of all, it's appropriate to welcome the committee to Sault Ste Marie. I think I have met all the faces before in Sault Ste Marie. Thanks for coming. Please come more often. We're far away and we're quite expensive to get to. I think you're all aware of that. Gas prices are outrageous and airfares are more outrageous. It probably cost you over \$800 return per person to get here, and that's difficult. But we're not here to talk about the price of fuel; we're here to talk about Bill 33.

I would like to acknowledge the government for this franchise legislation. I need to acknowledge Tony Martin's efforts. He has renewed the efforts of a revered former MPP from Sault Ste Marie, and a member of the Conservative Party at that time and Ontario's Attorney General. He capsulized his rationale as: Legislation was needed to deal with the evils of franchising. Then MPP Jim Wiseman also brought legislation forward and it died on the order paper. I believe this legislation's time has now come. Its intent is to offer a level playing field. That may be a euphemism for the real issue at hand, that is, to protect the little person against the big person.

The dictionary meaning of "franchise" suggests that it's a right or a privilege to hold a franchise. It makes no reference to franchisor or franchisee. So I suggest it's a right and a privilege for both. It connotes working together in the interests of both parties. But also, more significantly, one would hope it works to the benefit of the consumer, who should be paramount in your discussions.

I offer little expertise in this area. I have not done a great deal of research into this. So I'm sure I will not say anything you have not already heard or read about. Nevertheless, I would like to proffer some opinion.

I know that legislation such as that tabled can, if implemented, impact tens of thousands of lives in our great province. There are volumes of anecdotal tragedies and it hits home on all fronts. Locally, I make reference to some large grocery chains. We lost three franchisees in our community in the last five years. It may be a personal opinion, but it's shared by many, that really they were driven from the grocery retail business. Two of those three people no longer live in our community.

In a previous political life I was involved with some of these franchisees at the federal level and quickly found out that there was no protection at any level of government. These people were scurrying at that time, right across Ontario, to come together and attempt to speak as

one voice. That was nigh on impossible for them to do, and the only recourse they had was to hire legal counsel at great expense. So I have seen it at the federal level, you people are dealing with the provincial level, and there has been impact in the municipalities.

The people we lost were really good corporate citizens, and it was a loss to our community. I suspect that Mr Martin and others have recounted some of the very harsh realities as to why they left our community.

I don't want to be completely parochial, but it was, if nothing else, coincidental but also fortuitous that just last month, on February 10, we read, "Franchisor Leaves Travel Agents Stranded." I'm not here to implicate any of the major grocery chains, but in this one a couple of individuals opened a travel counter in a grocery outlet. The hierarchy is grocery chain, franchisor, franchisee. The chain did not pick the appropriate franchisor. The franchisor went bankrupt. The people in the travel agency at the grocery outlet were left in limbo. Each of them lost a \$60,000 investment.

It goes on: "The 'corporate solution,' however, turned out to be an agreement with another franchisor ...," and I'm not going to name names here, "which immediately demanded a new round of franchise payments and higher royalty fees from the tapped out ..." previous "franchisees."

The individual had a record of less than sound financial wherewithal. The only obvious victims of the failure were the franchisees.

"It is not our job to monitor franchise agreements," says head office. "People should go into such deals knowing that if the franchisor messes up, the subordinate franchisees automatically suffer." So it's almost a matter of fact. "If this happens, it's too bad. You're fresh out of luck," said the franchisee. "My mistake was to believe" blank "would be careful in its choice of franchisor and would not write us off." But indeed, they were written off.

1010

"Franchisees should recognize that most franchise agreements give them 'no say whatsoever' in the main aspects of the business." Again, I don't want to be completely parochial. It's at the provincial level and I'm sure you're well aware of these stories.

The bill itself—and I need to thank Susan Swift for providing this individual at least, and I suspect others, a comparison chart that's very easily read and understandable. I just want to highlight a few of the items I want to note.

I think the concept of incorporating minimum standards is good. I suspect that Mr Martin's bill is more restrictive, more onerous, if you will, and I read into it, for the most part, that it's good. One thing I really endorse is this dispute settlement mechanism. I would encourage you to support that—I guess in the way of an amendment, would it be, Tony? OK. I would hope the franchisor and the franchisee could go to mediation first before they go to court, because that's a very costly exercise. I suspect it would be complex, but again I

remember very well under the free trade agreement and NAFTA that there is a much-ballyhooed dispute settlement mechanism. So if something as complex as those agreements could have a dispute mechanism, I suspect this kind of legislation could as well.

I'm looking at the government bill and, as I say, I would endorse this and I think Mr Martin has gone on just a little bit more and added—is it flexibility or is it onerous restrictions? That's for you to decide. They don't seem that onerous to me, but then I'm not involved.

Under fair dealings and standards of conduct, it sets out minimum standards of conduct: good-faith dealing, enforcing only reasonable performance standards, exercising rights in a commercially reasonable manner, non-encroachment on territory, and it goes on. I suspect this should be described as flexible as opposed to restrictive.

The right to associate: I go back to the franchisees in Sault Ste Marie and right across the province at that time. They had no association. It was difficult to assemble them. There was no designated leadership and there was no unified front. I think Mr Martin is looking to deal with that in a more formal manner.

The bottom line is that the legislation, I believe, should be looked on as a positive piece of legislation. Who knows? Franchisors and franchisees may develop a healthy and a profitable relationship rather than one that seems to be built, from everything we read, on anxiety and fear.

I certainly thank you for the opportunity to make this presentation to you.

The Acting Chair: Thank you very much. That leaves us with about eight minutes of questions, and we'll start the first round with the Liberal caucus.

Mr Brown: Thank you, Mr Chair, and thank you, Your Worship. Some of us have looked at this legislation and wondered how we could make the golden rule work a little better, ie, he who's got the gold makes the rules.

It appears that this is a good step. Back in the 1990-95 Parliament, my former colleague Mr Mahoney, who has strong links to Sault Ste Marie, also offered franchise legislation. He is now in the federal Parliament, as you might know. But this is a problem here.

In Sault Ste Marie, of course, one of the interesting topics of great conversation is in terms of access to shelf space in independent groceries, for example. For the committee members who aren't from here, we have two competing dairies, which is a good thing, both attempting to have their product offered for sale in various retail outlets. I wonder if you could indicate, from the city's point of view, how that is impacting on the consumer. When it all comes down to it, this is really about consumers, at the end of the day.

Mr Butland: Thanks for that question, and please give my regards to Mr Mahoney. I wasn't aware that he also had tabled legislation on franchising.

The dairy issue in our community has met with some concern from some individuals that we are promoting one dairy over another, and we are not doing that whatsoever. We are just looking for that level playing field. If

shelf space is available to one, the other, or the three or four of them, should have an equitable share of that shelf space and not be restricted.

The specific example is that the totally local dairy had, I think, about 10% of shelf space and was selling a full 40% to 50% of the dairy product off that limited shelf space. That is probably good from the operator's perspective, but the store operator was saying, "We have to fill the shelves every half hour, and it has to be delivered to the store on a regular basis." So it's a major inconvenience to the operator, to the grocery retailer and to the consumer who is going into the store saying, "I want to buy this product." Yes, the consumer is of primary concern. Again, we are not looking to pit one against the other, but just to make it a level playing field.

Mr Tony Martin (Sault Ste Marie): Thank you for coming today, Steve. It's certainly good that another voice tells the Sault Ste Marie story for this concern. That is where I started to be concerned about franchising and regulating that industry. You make the point about three franchisees. We had three very dramatically public debacles as far as franchisees are concerned. I would guess there were probably hundreds of others in that five or six years who have struggled in one way or another. Some are gone; some struggle on. And who knows their stories as they try to do business, as they try to be good business people and good corporate citizens in this community? I am told that 75% of new franchisors die as the system evolves, and with them their franchisees, because one is tied to the other—you talked about the story in the paper.

What I want to get to today is an issue that I think will be a bit of a theme, which Mike has already introduced, which is the question of sourcing, of franchisees' ability to not be tied to buying from the parent company but to source product where they can get it at a competitive price and in that way help themselves in terms of their profitability and success and also help out local economies. In the north, local economies are getting killed at the moment, and I think part of the problem is that most of the deals are cut someplace else and most of the supply comes from someplace else, and that doesn't leave much room for our small local producers to get their materials on the shelves.

I have a number of articles—I was doing this all day yesterday—some more research that Susan Swift has done for me on just that issue. There is quite a bit of information out there. One is an article by Joseph Thompson on sourcing and pricing, "Anti-Trust Developments in Franchising." I'll give everybody a copy. Another is a summary of an article on purchasing supplies by franchisees, with some interesting commentary as well, most of them raising the same issue: Why can't the local franchisee source-supply where he can get it at a competitive price and help out local economies, because if a local economy is healthy, chances are they'll be more successful?

I've got about three or four different pieces of information here that I will give to the committee and leave on the table over here for anybody else who wants copies.

But maybe you could talk a little bit, Steve, to us today. We'll have three dairies in particular coming before us. I'm not sure if you know the story about My-T-Fresh Eggs, but they no longer exist. Maybe you could share with the committee that story and how it impacts the local economy here, because you were the MP when Beatrice left town.

1020

The Acting Chair: We're coming rapidly to the end of our time. A brief comment, please.

Mr Butland: The corporate giants in the dairy field we've all read about recently, one perhaps controlling 50% of the world's distribution in dairy products. The bigger they get, the more difficult it is for the local to survive in that marketplace. I guess what Mr Martin is getting to is the theme that if we can't support our own local industry—because we in northern Ontario are very much interdependent and look to support one another. It's not much of a comment, Tony, but thank you.

Mr John O'Toole (Durham): Thank you, Your Worship. It's wonderful to be in your great community and good weather.

I suspect that the important thing for us is to, in a general sense as people looking after the welfare of your citizens—and I think it's the same responsibility of this government, and I think that's the intent. I respect the fact that, whether it was Mr Mahoney or Wiseman or Martin, there have been attempts by previous governments to examine this rather faulty area for doing business. Are you convinced, just with a quick look at Bill 33, that the three fundamental goals or objectives of disclosure, fair dealing and the right to associate are a very good first step to ensure some sort of fairness in the marketplace for new people in business? Disclosure is an important part of the whole thing, and the right to associate, the experience of others who are more experienced, can avoid a lot of pitfalls, I think.

Mr Butland: The answer is yes.

The Acting Chair: I appreciate that. I think a background as a federal MP I appreciate even more. Did you have a very brief comment or question?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): No. My question has been covered by Mr O'Toole.

The Acting Chair: Your Worship, thank you very much for joining us this morning. We certainly look forward to spending the day in your marvellous community.

CANADIAN ALLIANCE OF FRANCHISE OPERATORS

The Acting Chair: The next witness will be the Canadian Alliance of Franchise Operators, Mr Les Stewart. Mr Stewart is an expert witness. Welcome to the committee, Mr Stewart. We have a period of time to spend together here, 45 minutes.

Mr Les Stewart: Thank you, Your Worship, Madam MPP and gentlemen.

The Acting Chair: He's the Worship; I'm the gentleman. But I appreciate the respect, because I don't get a lot of it.

Mr Stewart: I'm sure it's more than earned.

My name is Les Stewart. I've come to speak to you in the manner that I think one of the witnesses yesterday, David Michael, spoke to you. As you recall, David was with the Pizza Pizza franchise system. I hope to be able to go through a good deal of information and leave lots of time so that I can fill in the blanks.

I am first and foremost a business person. I have had training in business. I have an operating business in the Barrie area. I have 780 customers who seem to like what I'm doing in the lawn care business.

Please excuse me for being nervous, but it has been quite a few years. If I might go through a bit of personal history, I received my BA and MBA at the University of Western Ontario in London. I have extensive McDonald's restaurant experience, starting when I was 13 years old as a crew member and culminating in 1980, when I was first assistant manager in the Orillia McDonald's. At that time, I was employed by a franchisee who owned the Barrie, Midland and Orillia McDonald's. At that time, the ownership changed from that franchisee to McDonald's Canada Corp. That happened at the same time the Midland McDonald's was being certified as a union. From there I went back to finish my BA at Western. For three summers during the time at school I was a painting contractor; I ran a painting contractor business in Barrie. I worked also during the summer of my business program as a real estate researcher for a fellow who owned 28 Harvey's and Swiss Chalets out of Sarnia. We were successful in developing the real estate work to get five new stores going within the year.

I was also a medical audit coordinator at St Thomas Psychiatric Hospital after school. I learned that if you are going to start looking at medical records and dealing with physicians, psychiatrists, psychologists, you'd better have their trust. As a president of the only franchisee association in Canada, that is all I have: the trust of the people who have experienced franchising. The sound that you hear is the sound—the silence—of all of the successful franchisees in this country who are saying: "Mr Stewart, the message you are bringing here today is wrong. There's nothing wrong with franchising." I am not contradicted in my assertions by operating business people who have extensive knowledge of franchising.

What prevents them from communicating are a number of things that we will go through, but the only thing I have—CAFO, the Canadian Alliance of Franchise Operators, is my hobby. I have subsidized this for two and a half years from the operation of my business, and to anyone who thinks this is a money-making endeavour, I have the net worth to prove it.

I was a financial analyst for three years at Victoria Hospital in London, which is a large teaching hospital with an operating budget of \$350 million a year, so I have some experience in financial matters. I was laid off from that position in March 1992. I conducted a

traditional job search for nine months in an outplacement program at Price Waterhouse in London. I signed a franchise agreement after what has been deemed at trial to be the most extensive due diligence the judge has ever seen. I signed that franchise agreement one week before my unemployment insurance benefits ran out.

So what happened to me in my franchise? I operated it for four and a half years. The first two years I lost \$130,000. I achieved less than 25% of my pro forma income statement revenue. I am a fourth-level CMA, certified management accountant, and I have seen, in the four and a half years of the system that I was involved in, 17 ownership changes in the 24 markets that are served in Ontario by this lawn care franchise.

If it were just me, I would never be here today. But in the process of trying to find out what the devil happened, because first I had to explain to myself and then I had to explain to my wife and mother why she needed to mortgage the house after having it mortgage-free for 20 years, I needed to understand why. That is just all this is, an inquiry into understanding of, why the devil does this happen? Why do hard-working, bright, competent people get themselves into a situation where it seems that there is almost a system to strip life savings away from you?

1030

After four and a half years in a small business, cash is king. Working capital is the only thing you can't borrow. You have to either put it in in equity, or through the profitable operations of a business you increase your working capital. The cash ran out. Their solution was, "Just get your mother to put in another \$50,000." I said, "No, this is enough after four and a half years." They said, "Well, I guess you've got to sell."

I tried to sell it for nine months. I received an offer for \$35,000 two days before the injunction hearing. That was for a business that was listed and worth—and the franchisor agreed—\$171,000. When I represented myself in the Barrie courthouse for the request by the franchisor to stop me in the lawn care business, the judge said, "Mr Stewart, isn't half a loaf better than nothing?" I said, "Absolutely, and if I had an offer that was anywhere close, I would have gone." The judge looked at it and said: "You owe them some money for product. Pay them, and let's let the lawsuit carry on." I have been engaged since February 1998 in a legal battle with a \$350-million-a-year company. They control the trademarks of six franchise systems and at last count, when I checked their Web site, they have 1,600 franchisees. I am an example. It's not about money; it's all about control. I'm the one who just wouldn't go away.

I started the Canadian Alliance of Franchise Operators simply because I was trying to figure out what to do with myself. I tried to gain some assistance. I did everything by the book. Some people have characterized me as a bit of a Boy Scout, and that's probably true. I am a product of central Ontario, of a small community. I have gone on and received an education to become a productive member of this society. I have been involved with a system that has destroyed me financially and will probably win.

As my wife and I started to gain understanding of this—when I say “my wife and I,” I want to make this very clear: These are family businesses. Anybody who wants to elevate this to the level of Time Warner and AOL is trying to sell you something. What they’re trying to sell you is that it’s OK. The gentleman to my right in the back of the room will tell you: “It’s OK. What’s the problem?”

The stories I was hearing from the guys—my bookkeeper lost \$50,000 in a gas tank franchise system. My largest customer lost \$60,000 in an asphalt paving franchise. When you start looking at these things, and you’ve gone to school, you start saying: “What’s going on here? Does everybody have to deal with this in this way?”

I went through the injunction in Barrie. I represented myself, the most frightening thing I’ve ever done.

I’ve run a McDonald’s effectively: a 35% sales increase, an AAA rating, the highest McDonald’s can give. I have gone through an MBA program at Western, and I know pressure. This is nothing compared to this. If you control a man’s economic life, you control his will.

My wife and I made one decision and that is, we will not lie to take the short-term, easy solution. What I have done here, working with Tony and a small group of people, is simply because I believe it’s true, and I can prove it. As I’m sitting here, if it weren’t true, the avalanche of statements of claim from this industry would just crush me, because I am a vocal advocate for billions of dollars of franchisee investment. But they have had their tongues cut out by the perversion of civil law. There’s nothing civil about this law. It’s being used and twisted to extract the last nickel from a dying man.

Some of the truths that I’ve come to understand: Franchises are bought and sold as a consumer good; they are not a business-to-business relationship. I’ve brought a couple of examples of the trade magazines. When you start talking to people about their dreams and “the freedom to be what you can be,” you are not talking to Sam Bronfman; you are not talking to skilled people. You are talking to people who got laid off from Molson’s and are looking, this fall, at having a \$200,000 payout after 20 years in a brewery. If you don’t think the blood’s in the water and that inexperienced people are going to have that problem solved for them in that they’ve got too much money, then I think—it’s a word that I’ve gotten to use because I hang around way too many lawyers. It’s called “disingenuous.”

Where I come from, when you know something, you have responsibility for it. If I tell you something, you have responsibility. It seems that there is not much responsibility in this industry over a period of time. There is a pre-sale veneer of free enterprise and competition, market-driven. That is a veneer. As soon as you sign a franchise agreement, you’re in a monopoly situation. Franchisees need protection at the time when they can afford it the least, and that’s no coincidence, by the way.

As a responsible father, as a responsible husband, I did everything I possibly could do, and I probably invested too much money in a system that wasn’t particularly

predatory, when you compare it to everybody else. It was just incompetent. They didn’t know what they were doing. But it doesn’t matter. It doesn’t matter if you’re predatory or you’re incompetent in the behaviour that you exhibit, because it’s not your money. It’s other people’s money.

Franchising in a business administration sense is just—Wal-Mart is not franchised. They own all of those stores and they seem to have done pretty well. Franchising is just a way of raising capital, that’s all. It’s a way of raising capital and expanding the system quickly, and it also avoids all the security laws.

When people say franchising is extremely successful, I say: “Yes, you’re right. That’s true. But it’s the distribution of that success, it’s the allocation within the chain, between the franchisor and franchisee.” That’s the issue: It’s the relationship. It is what happens, where you find yourself, the decisions you have to make. Control tactics are used within the relationship, the greatest being fear and divide and conquer.

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People buy franchises because they’re afraid. They’re afraid that they won’t be able to feed their family. They’ve been laid off, they are out of school, they don’t have experience. People look for a solution. Within the relationship, it’s fear of losing everything you’ve put in, your sunk costs, being trapped by your own decisions. Afterwards, it’s fear of being prosecuted by some of the gentleman you saw yesterday. It’s the fear of the letterhead from the law firm in downtown Toronto. It’s the fear that “we are going to bury you alive.”

I have seen good people, very good people, not be able to speak. How can you deny a part of your life? It’s like not being able to speak of a death or not being able to associate with people to understand that you’re not alone.

The people I deal with are at my kitchen table. They’re invited into my home, because that’s where the truth about franchising comes out. Only franchisees add value to the economy. Everybody else is overhead or parasitic. Lawyers are parasitic, the industry is parasitic, salesmen are parasitic. It’s the capital. In an economic sense, we are the ones who add or subtract from the economy. When you are in a relationship and you are afraid, you don’t invest any more money in that relationship, in that activity. I am a specialist in fertilizing and the control of pests and weeds. When I was a franchisee, I withheld any money I possibly could because I knew it could be stripped away from me. It is not good economics, and Gillian Hadfield will talk about that tomorrow.

The fundamental thing in franchising: franchisees provide the money; franchisors control the money. That’s the fundamental issue in franchising and that’s where the opportunity for abuse comes in. Not that every relationship is abusive; it’s the opportunity to strip that away. Not everybody robs banks, but we have laws against bank robbery.

Lawyers are more of a hindrance than a help and the reason for that is because 95% of all the legal work in this industry is bought and paid for by the franchisor. It’s

their contracts, it's their loopholes to close up. They are the ones who spend money; they're the ones who have repeat business. I'll never buy a franchise again. My lawyer will only see me once, but if he were predominantly a corporate lawyer—he has a referral business, a reputation. He knows how to get these guys. He knows how to write the tough contracts, the 85-page contracts. He knows how to write those letters. That's his job. That's the franchisor's job, to write those letters and, in a sense, act as the goons.

What I've seen would absolutely chill you. I don't think it's an overstatement to say most motorcycle gangs have better internal discipline than some of the systems that I have seen. They have discipline only because they know they've got to keep it out of the newspapers.

The only thing I have ever had is the protection of the law—and a very unusual lawyer—and the free press, because if it's true and I can prove it, I am safe. But all of us around this table know that only goes so far. I have my telephone swept and I get the threats on the phone and I hear about people getting physical threats. This is an extremely good model for making money—brilliant. There are some brilliant minds at work.

The important thing in this industry is image—the only thing. I've sold things a bit in my life and I suggest everyone around this table has too. What I'm selling is an idea, but what you need to do is to say: “Look, do I trust him? Does he seem credible?” If you're doing to accept my idea, that's the first obstacle. If I can't overcome that, then we can't do business.

The selling image of this industry is extremely well managed. They dislike any kind of questioning of their success rates. They dislike doubt. When you're selling someone and their life savings are on the line, and they know it, believe me, salesmen who are on commission at trade shows do not like the message I bring. It's not because I bring the message that franchising is all bad, but what I bring is that fundamentally there's an imbalance. Right now, people may be making good money in a franchise and all I want them to do is to say: “Can you please put it in writing that you can guarantee me that it's going to make good money next year, the year after and the year after that?”—because you've put \$3 million into your grocery chain. Can you guarantee me that or could any franchisor guarantee it?

The markets change. I'm aware of that. I love competition. I love beating the brains out of the Weedman, taking their customers, and I do that by offering superior service and quality. I do that by supporting my community. I don't do it by holding my customers hostage and forcing them to be my customers.

Lawyers: Franchisees are rotten customers for lawyers. We're chippy. We don't like lawyers. They're expensive.

Franchise systems: The gentlemen you heard yesterday, with the exception of a couple, represent franchise systems. What I would like to know is, where are the principals of the major franchise systems? Why aren't they here? They've sent the gentlemen behind me. But if

they're such free-enterprise, market-driven people—you know, “Let the buyer beware and let's go. We want to be able to do this, a level playing field.” If that is true, then why are they in Toronto waiting for the phone calls that are going to happen when we have a break here? Why aren't they here? Because they don't like scrutiny. They don't like independent questions. They don't engage in games that aren't fixed.

As far as dispute resolution, the way it's resolved is that franchisees go broke. That's how it's resolved. You can't afford it any more. An injunction costs you \$10,000 to \$15,000. A trial is going to cost you \$30,000 to \$50,000, if you're lucky. To be able to say, “You have the private right of action,” when you have no money is just like saying, “You have the right to be a millionaire as long as you're not bankrupt.”

The bankers always get paid. That's a bit of a truism, but certainly small business loans are primarily what are used to finance franchise leasehold improvements and assets. I was told to my face in a meeting with a director of one of the very large banks in Canada that franchising is the most lucrative form of commercial lending. When I asked him, “Why is that?” he smiled, and I said, “Could it be because the franchisor always guarantees that your debts are covered when he transfers it to the new owner?”

This is extremely lucrative, and you can really tell by looking in the trade magazines. Just look at the back page. The people who are paying \$5,000, \$10,000, are the banks and the banks know all about this. You ask any regional bank manager in this province if he's had horror stories with franchisees and you'll get an honest answer, but you don't get the same kind of answer on Bay Street.

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In franchising, a fraction of a law is worse than no law. Let me explain that. In the US there is an FTC rule and it says that a franchisor can disclose, “We take all the rebates and the discounts; they belong to us.” If you sign the agreement with that disclosure document, then if you're being charged, say, 500% above the market rate for your products from the franchisor, or you're getting rebates, when you take that to court, the judge generally says, “You said here that he gets all the rebates and discounts.”

What I'm afraid of is that there we're going to create a law that gives the illusion of a solution so that the salesman at the trade show can say: “Ah, see this law? We can't do that any more. We can't be unfair. You have the right.” I'm not sure if the salesman is going to also say, “But you'll have to have \$50,000 to take it to court to prove it yourself.” The onus in Bill 33, in large measure, is on the franchisee to prove damage. The franchisee is in no economic position, in most cases, to do that.

When I talk about this I differentiate between the single unit franchisee—the normal guy—and the multi-unit, larger economic interest. Most franchises are sold as a consumer good to consumers, people who have never been in business before. They are the ones who are going to have to shoulder the great amount of weight of

enforcement of Bill 33 if it were to go without any amendments.

When I talk about what we should be looking at in franchising, there are six elements:

We would be looking at how open or transparent the process would be, like an ongoing relationship.

That it's accessible to people, that it's sort of auditable in an accounting sense. It's not behind closed doors, like the deals aren't done in the back room.

That's it's flexible, that we can deal with things in the future.

That it's reciprocal. I don't think franchisees are asking for any more rights than the franchisors already benefit from. The rights should be reciprocal in a partnership.

That they should be portable. We're signatories to international trade agreements, and I think we should learn from other constituencies, other jurisdictions, internationally.

It should be measurable. I've learned in business and at school that if you want a result, an outcome, then you'd better measure for it. If you don't measure for it, you'll never get it. If you're not looking for a profitable business, then you will lose money. You have to measure things.

I have before you a schematic called the Franchise Life Cycle. What I've attempted to do is show you the actual elements that occur before and during the relationship of franchising. This is based on my experience and the experience of hundreds of franchisees I've talked to. I've vetted this with most of the experts on the franchisee side. It's a bit of a working document.

Once you've signed the agreement you have entered into a hidden world, a world that is certainly never disclosed to you. If you have a positive response, then that's terrific. You sign the next franchise agreement and the franchise agreement after. If you have difficulty, though, your alternatives—and sometimes you can control this and sometimes a franchisor controls it—the three alternatives are to abandon your business, to transfer it, or to go independent. Those are the only three ways out.

Everything is geared for you to transfer. Very few franchise businesses go bankrupt. It's in everyone's interest to keep the store going because of the high cost of litigation, the threats of the new money you would put in. What I have done makes no economic sense whatsoever. In the situation I was in, I should have transferred to the next owner, taken the \$35,000 and walked away with \$80,000 worth of debt. That would have been the best economic alternative when I was faced with it.

The next sheet is a number of references.

The reason we are here is that I believe we have been successful, to a degree, in being able to gain access to the media. That chart, Published Franchising Articles, gives you an indication of what has happened. These volumes certainly aren't complete. This is my best effort to document the 4,629 franchise families whose stories have been so egregious that they've been able to reach the pages of the Toronto Star, the Globe and Mail and the Report on Business.

I believe we have an industry that is sadly in need of a new image, and the image is this law. I believe the franchise industry is coming to Queen's Park, coming to our democratic system, and what they want to do is use elected officials to save, to paper over, a deeply troubled industry.

I believe that if there are no problems, then what's the problem? If there are no problems—am I an unreasonable gentleman? I'm a business person. I make no money from doing this work. As Dave Michael says, "This has been put on me." I tried to do the best I could as a business person. It's not the result I expected, but that's what happens in business. But if you are playing a game of cards, shouldn't it be a full deck?

All I can do is provide you and Tony the information and put it in your lap and say, "Here's the information that I understand to be true." It is your responsibility to act on the information presented to you and to formulate public policy. I hope we can move towards that in a collegial manner, because I believe there are overarching needs here, pressing needs.

I'm not interested in history. I'm interested in the future, in what I can do and what I can bring back to the 40,000 people who are in this quandary right now. Those are the people, the \$6 billion worth of investment, the 40,000 families, the 600,000 employees—they're franchisee employees; they're not franchisor employees. I write the cheques. I always look to see where the money comes from, who is writing the cheques, who is opening the doors in the morning. It's guys like me. It's not guys in downtown Toronto.

The Acting Chair: Thank you very much. That leaves us about eight minutes, about two and a half minutes per party. We'll start with the NDP.

Mr Martin: Thank you very much for coming today, Les. I think it's important to put on the record right off the bat, so there's no misunderstanding, that I've worked with Les for about two years now, with the present government, preparing for the series of hearings we are having this week, so that the story could be told and, at the end of the day, we could do something helpful for Les and others like him in franchising who simply want to be good business people, as he has shared with us is possible if there is a level and fair playing field.

Les, this package you put together, which represents, as you said, some 4,600 families, is actually just the tip of the iceberg of stories of franchisees who have been damaged in this province alone, over only some five or seven years. In it, you have been quoted in a couple of articles that have been written. One of them is from the Globe and Mail on June 16, 1998, on page B14, if anybody has been able to lug them along on this trip. You say: "This legislation is a 10% solution. If they think this is going to clean up the industry, they're wrong." Could you elaborate?

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Mr Stewart: The information provided to you before you actually sign is carefully crafted. The salesman explained very clearly what you can and can't tell a

candidate. Yesterday Susan Kezios explained that 30 years of disclosure regulation in the US doesn't work, and the reason is that the salesmen are very good. They are good salesmen. As Mr Levitt said yesterday, they can sell around a disclosure document.

What will happen is, through your best efforts you will provide what in good conscience you feel will be a solution or recommendations for it after first reading. That will be immediately gamed by the industry, "How do we get this?" That's what the industry trade associations are for, to figure out how to get around it.

The Acting Chair: Parliamentary assistant.

Mr O'Toole: Thank you very much, Les. I was looking forward to your presentation. I'm sorry I had to move out a bit, but I'm quite taken with your commitment to this thing.

You say it is a 10% solution—and these are more statements than anything in response to your position. I can assure you that I believe we are trying to find some balance. A 10% solution might be a bit critical. I don't want to refer to you in the Boy Scout mode, like the world is ideal. Forget it; it isn't. Sorry for that awakening here, but the judge said the same thing to you. He said half a loaf is better than no loaf at all. I'm not trying to be harsh on you. You have to realize that the only thing that's perfect is that one plus one is two, and beyond that it's a bit of a binary situation.

Can you suggest one thing within the framework we've defined that would improve—not totally correct; we've passed that, we're not astronauts—but one thing we could do that would make a real impact on these 40,000 victims, self-imposed victims in some cases? What could we do?

Mr Stewart: Outlaw gag orders. Outlaw gag orders.

Mr O'Toole: Wouldn't the right to associate—you now have an association, and you could probably be the president of it, where these people can all get together and say, "These are the do's and the don'ts of buying a business." Actually it's buying a job; it's not buying a business.

Mr Stewart: If it's buying a job, then there should be labour laws, Mr O'Toole.

Mr O'Toole: For the employer.

Mr Stewart: The employee, too.

Mr O'Toole: Well, agreed. I don't disagree with that. But I'm saying they are buying that. That's what their investment is trying to do.

I guess I'm trying to say: Do you think the right to associate would in some way help that or at least be the first good step in that direction—for instance, the experience you could share with them as a seminar leader. You could be a guest speaker at some of these workshops.

Mr Stewart: I'd love to be able to do that.

Mr O'Toole: I'm sure you would.

Mr Stewart: And do you know how many would be able to show? Exactly none. There's an article in here that appeared in the Toronto Star and it said, "Les Stewart loses." That was faxed. In your first in camera session you heard from a system and the lawyer just

before that—that was faxed to those people. That was a message: "Do not touch Mr Stewart. Do not get close to him. If you get close to him, I'll set up a retail outlet right next to you and charge half the price, because I have that right." This is about power, plain and simple.

Mr Brown: Thank you, Mr Stewart. One thing you make very clear is the inequity or the inability of legal systems to deal with these questions, in a way. Obviously, he who has the gold can afford the lawyers. In the American experience—and I'm not very familiar with that—often many of these things can go on contingency, which isn't permitted in Ontario. Has that, in the American experience, assisted franchisees in any way in dealing with the franchisors?

Mr Stewart: I certainly think the issues of contingency help in the US system. Also, there are a lot more jury trials with franchisees, and the courts will issue punitive damages as opposed to—it's like they want to send a message to the franchise community, so they will say, "Yes, you've had \$150,000 in damages, but you get \$500,000 in punitive damages," as a message to the industry to stop doing that. That's done through a jury trial. That's why franchisors in the US don't like juries. In Canada, it's almost impossible to get a jury trial.

Mr Brown: Due to the expense of getting the case that far?

Mr Stewart: In Canada, the courts have generally been a great deal less willing to understand franchising, the unique relationship, because it is not employer-employee and it's not independent contractor. It's a hybrid, in the middle. The courts understand what's written on the piece of paper, the four corners of the contract. Gillian will talk about that tomorrow. If it's not on the piece of paper, it doesn't exist, in most courts' interpretations.

The Acting Chair: Thank you very much for appearing in front of the committee. We appreciate it.

ALGOMA FEDERATION OF AGRICULTURE

The Acting Chair: Our next witness is the Algoma Federation of Agriculture, Mr Connolly and Ms Bonnett. Welcome to the committee. We have 20 minutes together. You can use that time as you see fit in presentations. We'll fill in the remaining time with questions.

Ms Cathy Bonnett: Good morning. We are here this morning representing the Algoma Federation of Agriculture. Thank you for the opportunity to address the hearings on behalf of our area agricultural producers. We understand that these hearings are primarily concentrating on the business relationship between franchise partners, but there are aspects of modern marketing relationships that have an impact on primary producers and need to be identified and addressed. Our comments relate to the issue of market access in large chain stores.

The Algoma Federation of Agriculture represents the farming community surrounding the area of Sault Ste Marie. Our principal focus is to help producers by trying

to ensure that economic and social issues affecting their farming operations are dealt with. On the economic side, Algoma farmers, like their counterparts in many parts of the country, are fighting to cover operating costs. Over the last several years, prices paid to farmers for their raw product have been stable or declining. Farmers have been involved in further processing of their goods as an attempt to try and increase economic returns.

Government policies and programs have been developed to assist farmers in these endeavours. These attempts at diversification into the processing side of the industry have benefits for the rural community and to local farmers. The Algoma Federation of Agriculture is currently undertaking an economic impact study. These studies are designed by University of Guelph researcher Dr Harry Cummings. They're an attempt to quantify the economic activity generated by agricultural production.

An interesting fact to come out of the recently completed studies is the amazing multiplier effect that primary agriculture has in an area. In most cases, for every job created on the farm, four off-farm jobs are created. Job creation, increased municipal tax base and economic stability for rural communities have been side effects to the diversification initiative.

What does all this have to do with franchising? Modern retail relationships such as franchising are based on the premise that joint purchasing, marketing and distribution systems lead to savings for the consumer. The retail sector has been competition-driven, with participants attempting to find any edge over their competitors. One tool used to increase competitiveness has been centralized purchasing.

Local suppliers feel shut out of the process, either because they cannot supply the volume of product required or because of the exclusionary stocking arrangements that have been signed with large distributors. The reality of modern retailing is that if your product is not in the large chains, you do not have adequate access to the market. Local processors who do not have merchandise on the shelves of the large chains have a very difficult time creating consumer exposure for their product. Franchise operations have become expert at marketing, advertising and product placement. As a result, consumers are more apt to seek these venues rather than the traditional independently owned operations.

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Properly worded franchise agreements could help alleviate the problems that many small rural businesses are facing. If local producers and processors could place their product in the large chains, they would gain market access. This would enhance consumer choice. This exposure could lead to increased sales for local producers and processors.

The main point that we feel should be considered within the context of a franchise agreement is the issue of retailer independence. Retailers should not be tied strictly to purchasing from the main distributor. A certain amount of flexibility to source products locally and independently must be part of a franchise arrangement. It

would allow local entrepreneurs to take advantage of the good points of franchising, those being excellence in advertising, exposure to high consumer traffic, marketing advice and brand recognition.

There is an opportunity for franchise operations to develop a "buy local" campaign. Dedicated retail space could be set aside for local products. Naturally, there would have to be criteria established; for example, what is a local product? Minimum amounts of product turnover would be required. A campaign of this nature would not only provide area entrepreneurs with an outlet for their goods but would also demonstrate the commitment of the franchise to the community. This can happen if the language in the franchise legislation encourages managers to capitalize on local marketing opportunities.

As mentioned, the Algoma Federation of Agriculture is concerned about what is happening in our rural communities. Our children are leaving for jobs in other areas, our municipalities are crying out for tax revenue and farm family incomes are below provincial averages. Adding value to farm product creates an opportunity to alleviate some of these concerns. A few small changes in the way large chains source their product and stock their shelves could make a huge difference to rural businesses. Thank you.

The Acting Chair: Thank you very much. That leaves us with about four minutes per caucus. Mr Gilchrist.

Mr Steve Gilchrist (Scarborough East): Thank you very much for your presentation here this morning. I bring to these hearings a 25-year experience with a particular franchise, Canadian Tire. We had similar experiences. The dealers would find locally sourced products that were less expensive than what head office had supplied. But there is a conundrum faced by a national chain in particular, and I guess I would invite your feedback. There were certain things that were very freight-intensive, not unlike milk and other dairy products, low cube but high weight, and ultimately Canadian Tire did allow things like salt or fertilizer or windshield washer fluid, so that if there was a factory closer than the one supplying head office in Toronto, you could go to them. They certainly put in place quality standards but they were not unreasonable in allowing dealers to go out.

But for something that isn't freight-intensive, you've got the trade-off that while it may, on the surface, look cheaper to buy locally, you then can't have a national promotion. How can I advertise Black and Decker drills in a flyer that's going to every household in Canada if you decided that Makita drills were a better deal because the local distributor offered you a rebate or a discount? How does a national chain confront the problem that if you're trying to find efficiencies on one level, say, advertising, and have a compelling message to bring people into the store, then you've got to have a brand name on that flyer? How do you reconcile that with the message you're bringing to us here today?

Mr Ryan Connolly: Well, you could have a local brand name. The fact that it is Algoma, I agree, you couldn't advertise nationally, but you could advertise

within the area that you're selling into. Possibly that would make more money than the national product you are trying to sell.

Mr Gilchrist: The problem is when Canadian Tire goes to Quebecor or whatever company is printing the flyer right now, there is one flyer. Literally there is one run of millions of pieces of literature. It really becomes a brand new flyer if you change the picture or the name on any one section. It's not that I'm not sensitive to the message; it's sort of the trade-off. If in fact the national chains aren't giving you access but you can supply it for a lower cost because they're paying the freight to bring it from, let's say, a dairy in Toronto, doesn't that suggest that there may be some smaller stores in the area that, if they stocked the local product, would have a price advantage? And in time that's how small stores become big stores, by offering something their competitors can't offer.

Mr Connolly: And I think we're at that point. We do put our products into the small stores, into the local butcher shops and into some of the independent stores, but we're completely cut out of the large chain stores.

Mr Gilchrist: Why is that? Is it price?

Mr Connolly: When I approached them to sell my product in there, they simply had no system of purchasing it and paying you. The purchasing was done centrally and it was simply a "no."

Mr Gilchrist: Do you have the support of the local retailers up here? Did they help to carry that message to whichever company's head office you were going to?

Mr Connolly: No.

Mr Gilchrist: Because you hadn't approached them?

Mr Connolly: When I approached them, it wasn't possible to do it and that was the end of the deal.

Mr Gilchrist: So they feel constrained by pressure from head office to not side with you.

Mr Connolly: I assume that.

Ms Bonnett: Can I also add that a lot of the times in the flyers I receive in my home they will advertise, for example, that pork chops are on sale this week. It doesn't say Maple Leaf pork chops, it doesn't say Canada Packers pork chops; it just says pork chops. They could be my pork chops.

Mr Gilchrist: That's true. If a chain wanted to make it generic, that is an option.

Ms Bonnett: Exactly, and a lot of the flyers are that way. So the national advertising campaign would not impact at all because they're just saying it's pork chops.

Mr Gilchrist: I would be genuinely astounded if a retailer was not going to the lowest possible price. That is so contrary to the most fundamental rules of business. If there's something buried with rebates and advertising discounts and volume discounts being offered by Beatrice or some of the national chains and they really are cheaper, even after you've paid the freight, that's one thing. But if it's just the top-line price, I've got to believe that with something as weight-intensive as milk you would be much more competitive if it was locally produced.

Ms Bonnett: There are a lot more products involved in this, though, than strictly milk. Milk is one. But we're representing all producers so we're talking meat, we're talking vegetables, we're talking value-added products in that respect as well. It has been our understanding, and our producers have told us, that they simply cannot access space on the shelves because of the franchising agreements. That's why we were pushing for the wording to be such that a certain amount of the shelf space would be at the option of the local owner-operator versus if you have 12 feet of space, all 12 feet have to be displaying brands that the store sells.

Mr Gilchrist: I think I've used my time. Thank you.

Mr O'Toole: I'd just encourage you to encourage the Ontario Federation of Agriculture to make that an issue, because that's the higher-level order of—it's the same issue Steve is talking about, the one-ofs across the province. Your federation has a policy position on this and it should be articulating that now on behalf of all farmers of Ontario.

Ms Bonnett: Actually, they are, in London.

Mr Brown: I'm sure Cathy knows somebody on the executive of the Ontario Federation of Agriculture who can do that quite well.

This is an ongoing problem. First, the Algoma Federation of Agriculture and its members have been diversifying their product range quite dramatically, at least over the last few years. I actually had a young woman maybe in her early twenties going into the garlic business coming to see me. She can sell all her product without even marketing it; it's great.

But my real point is that we know that in fresh fruits and vegetables and the horticultural industry, which is starting to blossom—sorry—and many others, access to retail markets is the issue. Although we're talking about franchises here, some of these stores are directly owned, some of the large chains, where we have problems getting the access in. I go back to Jim McGuigan, who was the member for Essex some time ago, who had great problems getting his tomatoes to market. I'm sure that's something that's going on here. So you think there needs to be written into the legislation a guarantee of some sort? I'm trying to figure out how we do that.

Ms Bonnett: I don't know that it has to be a guarantee of shelf space or that sort of thing. I think the wording has to be such that there is a certain amount of discretion for sourcing product given to the owner, operator, manager, whatever term you want to use for the franchise manager. Otherwise, if they have to stay to the letter of the agreement, they're limiting themselves. There are a lot of opportunities out there, not the least of which is being a good community citizen. In a lot of areas that's really important—in every area that's important. People tend to be very cynical about large corporations, and this is a good opportunity for the corporations to become part of the citizenry of the area.

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Mr Brown: My friend Mr Gilchrist made a good point, and I don't really know how to quantify this, but

there are all kinds of issues. It's not just the price you pay that's important here; there is a huge number of commercial issues that impact on the price of product on the shelf. Just because the price is the same doesn't mean the value to the retailer is the same.

I'm wondering about some kind of system where the price is known and those other factors are taken into account in some way, the value of the promotion, the value of the mass marketing. If you can compete, why shouldn't you be in there? That sort of thing needs to be looked at, I believe. I'm not quite sure how to do it, but I guess that's why we're here.

Mr Martin: We've heard a lot about price here in the last couple of minutes, and the other piece that I'd like to enter into the mix is, what about consumer choice? I want locally grown stuff because it doesn't have chemicals and all those kinds of things, and I may be willing to pay a premium for that, but if it's not on the shelf, I can't buy it, which is part of the issue that you're bringing here today. This is having a terrible effect on the local economy. I've been looking at this for about five years now. I remember 10 years ago when Beatrice moved their processing someplace else and the stories that were told at that time of the effect that would have on local dairy farmers. I think either you or your brother was one at the time; I'm not sure which one.

Then we have the story of My-T-Fresh Eggs, which is now out of business. That was a small producer in the Iron Bridge area that hired people, paid taxes, was a good corporate citizen, and they're now gone. The local economy is being killed because of the distribution systems that are in place and all the things that you have laid on the table here today.

I'd like to hear from you a bit further on the effect of some of this, not just on the specific farmer but on the local economy in general. How many dairy farmers are still in business in Algoma today as compared to, say, 10 years ago when Beatrice was processing here?

Mr Connolly: I'm no longer a dairy farmer myself, but I think there are 17 dairy farms left. When I started 20 years ago there were 50, so it has decreased, but it has decreased over the whole province too. How much more effect there is here than there was elsewhere, I'm not sure about that, but it has had an effect. It changes the economy. It changes what happens with our local co-op, how much feed is put through there, and it dramatically changed down the line all the way.

On the other end of it, some of the other industries have picked up, the sheep industry and the beef industry. Those products could move from our farms into the Soo, and a certain amount do. We have the system in place of trucking the product or getting the product processed and getting it moved to the Soo, but the problem is that we're limited in the number of retailers in the Soo that will take our product and sell it for us—only the independents or the small butcher shops on the meat end of it. There are only a few places you can put your product into. I put my product into three places every week in the Soo, but all the other places are selling the same product, and it is a

generic product, it's meat, as long as it's of the same quality. I'm sure our pricing is very competitive, because we live in a competitive market, but you just can't get in the door.

Mr Martin: When I challenged Kevin Ryan yesterday, from National Grocers, who came before us to tell us of their concern and approach to this, they actually like the way things are, because they're in control. They're saying to us that in order for them to get their product into Kapuskasing, for example, they have to have in place these larger purchasing efforts and distribution efforts or else they won't be able to get it there.

Mr Connolly: We ship with their transport. They come to the packers and pick it up, and it's loaded on there and it's shipped just the same way as it would be shipped if they were purchasing from anywhere in Ontario.

Mr Martin: So that argument doesn't hold any water.

Mr Connolly: I would say not.

The Acting Chair: Thank you both for coming before the committee. We appreciate it very much.

TIM HORTONS

The Acting Chair: Our next witness is Mr Javor from Tim Hortons. Welcome to the committee, Mr Javor. We have 20 minutes to spend together.

Mr Nick Javor: Just for the committee's knowledge, I'll be forwarding a copy of my prepared text in the next day or two for everyone to have for your review later on.

Good morning, Chair, and committee members. Thanks for the invitation to speak with you today. My name is Nick Javor. I have been involved in franchising since 1987. For six years I was president of a medium-sized franchisor in the automotive sector, Mr Lube. When I left in 1994 we had 90 outlets, 50% corporate and 50% franchised. We had system sales of \$65 million.

I have been with Tim Hortons for some five years now. My current capacity is regional vice-president of southwestern Ontario operations. I have 375 stores in my region, operated by 160 franchisees. Tim Hortons as a whole had some 1,840 locations at year-end 1999, with chain-wide sales of \$1.5 billion.

I also want to point out that I have been an active member of the Canadian Franchise Association since 1987. I served on the board as a director for 10 years and served a term as chairman. I also represented Canada at the first World Summit on Franchising in Mexico City in 1992. I was the first Canadian to receive the certified franchise executive designation from the International Franchise Association, also in 1992.

I have also been very committed to the process of bringing franchise legislation to Ontario, having served on the Franchise Sector Working Team since its inception in December 1994.

I come here today on behalf of my organization to offer our support for the proposed Bill 33. We applaud the efforts of the Franchise Sector Working Team and the ministry in bringing legislation to this province. I echo

many of the comments we heard yesterday at the committee meeting in Toronto, namely that disclosure-based regulation is long overdue and is a very important first step and, may I add, a huge first step, for a province that has been unregulated in this area.

This industry team has worked very hard to discuss and debate the issues. Under the leadership of Joseph Hoffman and the ministry staff, we reached consensus on the direction of the proposed legislation. Our team should be very proud of our efforts and the impact we have had to date in helping shape the bill. I am delighted also that the ministry has committed to involving this same working team when the time comes to discuss the regulations.

My remarks today will not be a total repeat of what you have already heard from the other presenters supporting this bill; I have a few additional points to make. The consistent message we heard yesterday from those who supported the bill was that the three key elements are included in the proposed legislation and that they must remain: first, disclosure of those material facts that are pertinent and necessary to allow someone to make a good investment decision in a particular franchise; the right of association for franchisees—I have not heard of any objection to this aspect of the bill to date; and third, duty of fair dealing. I will speak to this in a bit more detail in a few minutes.

My remarks instead will be a commentary on some of the broad-brush statements made yesterday by those who are not fully supportive of the bill in its proposed state. At times we heard strong views that franchising in Canada is some 30 years behind the US and that every franchise agreement should come wrapped with a warning label. We heard franchise lawyers say that franchisors can't be trusted, and one lawyer in particular stated that perhaps Tim Hortons should close some of its units to satisfy a three-mile-radius clause.

I quite frankly take exception to these general and brand-specific points, especially to the often biased portrayal of the franchisor side of the franchise relationship.

I want to deal first with this one-sided portrayal of the franchise relationship, namely that franchisors are to blame for the woes of franchising. There were calls for relationship legislation to be included in the bill so as to protect the investment of the franchisee, because the post-sale relationship is at the heart of the problems in franchising today. We heard that yesterday. We also heard that franchisees do lose their life savings, they cannot afford to hire lawyers, and are terrified to speak and be heard. I also heard that franchise start-ups are not as successful as small business start-ups in general and that there are some 5,000 lawsuits a year in Ontario.

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I also heard that the Pizza Pizza affair was the lightning rod that changed the franchise landscape forever in Ontario. Quite frankly, on a personal note, I'm sick and tired of the Pizza Pizza situation. No one can argue that it was a very unfortunate example of the franchise relationship having gone sour and what can happen when industry best practices do not occur. I feel this is an extreme

case and that those who are against Bill 33 are using it as the failure standard and barometer against which to try and create legislation that will prevent it from happening again. Legislation cannot prevent fraudulent behaviour. You cannot force, through legislation, the promise of a 100% money-back guarantee and the need to protect totally the unsophisticated investor. There is risk in any business, whether it's franchised or not.

The answer partly lies in the following point: The CFA coined a phrase a few years ago, "Before you invest, investigate." This to me is the single most powerful piece of advice that any person should be given regarding starting their own business, again whether it's franchised or not. The use of a disclosure document absolutely speaks to this point.

Let me comment on the issue of pre-sale disclosure, duty of fair dealing and the post-sale relationship management. First off, mandatory disclosure required by law is a terrific way to ensure that the franchisee prospect gets meaningful information. This is a big step and will have the most impact on improving the quality of franchising in Ontario. Because of Bill 33, there is a civil right of action available by franchisees against franchisors for the misrepresentation of disclosure information. Don't you think this will serve as a disincentive and deterrent to those bad apple franchisors? The bill even has full accountability for those who sign the disclosure document. We heard yesterday from the president of the American Association of Franchisees that US legislation does not even provide such a remedy for violations of a FTC order.

Everyone is also aware that Ontario law now requires mediation prior to going to trial to settle civil disputes. This too is a terrific new development that can only help franchising in this province.

We also heard yesterday in the remarks of the Canadian Federation of Independent Business that their member research in February 1995 noted that 48% of respondents felt that franchise agreements are private business deals and governments should not have the right to interfere. Consultation with legal and other advisers prior to the signing of the franchise contract provides effective protection for the franchisee.

The Canadian Bar Association of Ontario has also confirmed their position against relationship standard legislation. They cite the reason of complexities of types of franchise offers, from the small investments like home services to the large real estate investments made by institutional players. No specific industry standard or definition can apply uniformly to this broad scope of franchise types. They also commented that the level of sophistication of franchisors and franchisees is widespread. What's best for the less sophisticated franchisee's prospects are education programs from franchisors, the government and trade associations such as the CFA and the CFIB. They need to be given financial and legal advice.

My experience in the Tim Hortons system is that our franchisee candidates today are more prepared than they

have ever been. They come to interviews demonstrating an incredible amount of due diligence. In this day and age, unlike perhaps during the early 1980s, we do not see folks paying \$10,000 on the spot at a trade show to secure a territory or franchise.

With respect to the duty of fair dealing issue, I think a major point has not been emphasized enough in the commentary so far. Bill 33 does address fair dealing. Fair dealing is a statutory requirement for the entire franchise process. Section 3 states clearly, "Every franchise agreement imposes on each party a duty of fair dealing in its performance and enforcement." It is not limited only to the pre-sale disclosure stage, as some presenters tried to position yesterday.

I do not agree with other commentators that the definition of fair dealing must include the component of commercial reasonableness. This already exists in contract law and is adequately covered there. I too agree with the CBAO in thinking that increased litigation will result because of interpretation difficulties, thus increasing the burden on the judicial system.

Governments everywhere in this day and age are looking at streamlining and reducing red tape and bureaucracy. There must continue to be an incentive for those small, emerging franchisors who are going to generate jobs and create opportunities as they expand.

Back to statistics for a moment. The notion that there are 5,000 civil cases filed every year in Ontario has not been substantiated. The notion that franchising is 85% more successful than independent start-ups has not been substantiated either. I encourage the ministry to carry on with their discussions with the CFA and the sector working team on how best to obtain statistics. No one can, with any degree of confidence, discuss the extent of the franchising woes in Ontario, because data are not available. We cannot continue to rely on anecdotal evidence, and we surely cannot expect those who draft legislation to rely solely on this type of evidence either. It would not be fair to craft legislation to deal with a marketplace perception situation versus marketplace reality.

The Franchise Sector Working Team members are aware that a research methodology was being discussed in the spring of 1999, but was put on hold due to the calling of the summer election. In my opinion, it should be a priority of the ministry to deal with this critical issue of lack of data on the franchising sector.

I would also like to comment on two other areas of franchising that have been cast in a very negative light: the fact that franchise agreements are not written in plain language and are often 80 pages long. Some have said that they have to be this long so as to capture all the one-sided rules that franchisors must have. I agree that the language must be made simpler and more user-friendly. I also agree with the comment made yesterday that franchising should not be the major contributor to the retirement fund for lawyers. However, I take exception to the statement that franchise agreements are all one-sided and intentionally crafted that way.

One of the major, fundamental cornerstones of franchising in my experience has been the need for system-wide standards and consistent application of these standards. When franchisees sign up for the Tim Hortons system, they absolutely expect us, as their franchisor, to have a rule book that requires standards for quality, service, cleanliness and value. If and when a franchisee decides to behave out of the box and does not buy into the QSCV formula, they threaten the other franchisees' investments, they erode the value of the brand and jeopardize the relationship with the customer. Those critics who say that franchisors always put forward this argument to justify their heavy-handedness, quite frankly, in my opinion, do not understand this is a cornerstone of franchising.

Protecting the integrity of the brand is paramount in franchising. Franchisees enter into a long-term relationship with the franchisor for the purpose of accessing the brand and the ongoing support that the owners of the trademark provide. Part of this ongoing support is the national buying power that it can provide. Bulk buying is a positive element of franchising when managed well. In Tim Hortons, our franchisees clearly enjoy this benefit. Bill 33 will obligate franchisors to disclose how they treat their volume discounts and what policy they have in place to handle this area. This will be addressed in regulations. The same goes for ad fund treatment.

Let me conclude that, based on my experience in franchising, the best way to help increase the positive impact that franchising can have on Ontario commerce is to introduce Bill 33. Over the past 10 years, because of the efforts of the CFA, government agencies and educational institutions, the investing public is getting better at making the right franchise decision. Numerous franchise specialists and experts can be turned to for advice. The Internet, as we all know, is becoming an incredibly valuable tool to provide instant access to franchise company information.

At the risk of self-promotion, I wish that all franchisors, regardless of size and maturity, could embrace the same philosophy of franchising and demonstrate the respectful and franchisee-first attitude that Tim Hortons has shown over the years. We have been in business since 1964. Our founder and chairman has been awarded the Order of Canada. He was the 1999 Canadian entrepreneur of the year. He has been inducted into the Canadian Business Hall of Fame. We have four, soon to be five, Children's Foundation camps that send thousands of monetarily underprivileged kids to camp each year. Marketplace success and a family of dedicated franchise owners allows us to do this and be recognized for it.

We have copied other successful franchisors over the years. We have marketing managers in the field, as well as operations managers. They call on our franchisees for the purpose of helping them be more successful, following our national franchise standards. We have a national advisory board and a joint operations committee. They meet three times a year. We have regional chain-wide meetings in the spring and fall across the country. Our ad

funds are audited each year by an independent third party. Our founder's philosophy has always been that "the franchisee's success will help make the franchisor successful." He has always said we will turn down a deal if it can't make the franchisee a buck in the long term.

We are not perfect; we do have disputes from time to time. We have asked franchisees to leave our system. But we go to incredible lengths to do everything in our power to deal with those challenging situations and to help operators operate their businesses in a more successful way. As a brand, we treasure the special place we occupy in the hearts of Canadian consumers—consumers who are incredibly loyal, I might add.

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In conclusion, Bill 33 in its current form is all that the Ontario franchise community can embrace and implement at this time. Hopefully, we can also get organized to collect statistics to demonstrate that we are headed in the right direction for franchising.

I honestly feel that if we do not move forward with the bill at this time, we will have missed a great opportunity. The people of Ontario have given the government of the day the mandate to enhance the standard of living of its citizens by creating jobs and opportunities. Franchising is a proven vehicle for doing this.

I would be pleased to answer any questions the committee may have.

The Acting Chair: Thank you, Mr Javor. Two minutes each, and we'll start with the Liberal caucus.

Mrs Claudette Boyer (Ottawa-Vanier): I commend you for giving the good things in Bill 33. You say you support it. The disclosure is important as far as you're concerned, and fair dealing. Since you were at the hearings yesterday and heard about it, we were told by this American presenter that she thought it didn't have enough teeth and that it should go further, that it doesn't go far enough. You said when you were resuming your presentation that it was time the government did implement this. Do you think we should try, before implementing Bill 33, to go further? I know you did give a couple of things that we should add, but do you feel it is strong enough as it is now?

Mr Javor: I do. I feel that we have a window of opportunity to move forward with the bill in its current form. Again, I have been involved with this process for five years to get this far. I know how hard the FSMT has worked to try to balance the needs and wishes of all the stakeholders. It was not easy. It was a lot of hard work to get this far. Yes, there's always a better mousetrap somewhere and yes, you can always hold off on key decisions that can impact folks by waiting for the next best answer. I'm always a proponent, and I always have been, in my personal business life that you go with the 80-20 formula, that if you have 80% of what you need, that can perhaps get you down the road to where you want to go long-term. Then you should show leadership and move forward in that regard.

Mr Martin: I don't think there's anybody who's suggesting that there aren't good franchise systems around,

and certainly Tim Hortons presents at this time as one of those good systems, for all the reasons you've laid out on the table here today. What you have we want for all the systems, because when a system goes sour, as you suggest in the Pizza Pizza case, you're all painted with the same brush. That's unfortunate. It affects a good business relationship and ultimately probably affects the franchisee the most because they're the most exposed and vulnerable.

My concern is when good systems get sold, and that's happening. There's a trend today where the bigger guy eats up the smaller guy and the relationship changes. We had that experience here in Sault Ste Marie where Provigo bought out Loeb and wiped out two of our best corporate citizens overnight. They slept in their stores for two weeks to protect their interests. That's how difficult that was.

We've heard that 241 Pizza has just bought out Robins Donuts. What happens if tomorrow Pizza Pizza buys out Tim Hortons? Do you have anything in your agreement with your franchisees that protects them in that instance?

Mr Javor: That's a very good question, Mr Martin, because this is the day of mergers and acquisitions. This is the business strategy of a lot of folks. I would answer your question with perhaps a description of our franchisee relationship. I think successful franchisors and chains and brands get successful not by accident but because of the hard work and everybody's focused on a mutual goal. The mutual goal in our organization, and other franchisors who have been privileged to be as successful as us, is clear: to deliver customer service and realize that the way we get excellent customer service is by having franchisees who are committed to that. We have a strong culture of excellence and commitment. I think it would be very difficult for a new ownership group to come in and absolutely take away what's taken us 30 years to earn and to grow together with our franchisee ownership.

The fact that we involve our owners a lot in our business at the advisory board level and committee level that I mentioned earlier I guess is a testament to the strength of that commitment we have to ourselves in the marketplace, and that is bigger than the contract. It takes many years to change cultures at corporations. Those of us here who have been in private business over the years understand that. Truly, yes, the top of the house or the CEO and president help set the tone—that's well-documented research—but also when you have a strong commitment at the grassroots level in your community, where your franchisees are absolutely actively involved in supporting your community, because they know where they're bread is buttered. It's not downtown Toronto, it's all the communities where we have stores in our particular chain across the country.

I honestly think that when a merger and acquisition comes along the strength of the brand will come through based on these types of commitments and relationships.

Mr Gill: Thank you very much for your presentation. There has been a lot of discussion about local sourcing. Do you want to shed more light on that, local sourcing in

terms of purchasing? I know you touched on that saying that it might not be economical. Can you shed some more light? Let me give you a scenario: Sometimes the distribution chains do build warehouses in different places where they pick up the merchandise locally and then they deliver it locally. Could a similar situation not fit into your systems?

Mr Javor: We have that. We have regional distribution centres across the country that are located strategically to deliver our branded product and items to our operators who have a contractual commitment to sell certain branded Tim Hortons items, obviously. We have proprietary flour mixes and baking mixes, that kind of thing. But we do allow local flexibility for items that, quite frankly—and I heard earlier presentations and I know the agenda today has a strong voice from the dairy group. It's important to our type of business that there be the ability to source that locally, quickly, in case of runouts. You can't wait for the truck to come three days later from Kingston or wherever the plant happens to be.

We have strategically looked at those items and products where it makes sense to have a flexibility locally, like dairies in our particular case, where we have the ability, through good planning, through good logistics management, through correct buying power, to have our key suppliers of record deliver to our distribution centres. Where we can handpick and then deliver the order as per our franchisee's request, we will do that, realizing that this is an economics-driven arena in terms of logistics management. But we also balance that with what will help the store operators run their business, because when you're out of 18% cream in our stores, customers get real upset.

Mr O'Toole: Just a quick one: You're well recognized at Tim Hortons, the branding name, and understand all of the vertical, top-down directions. It works, why not? I'm just wondering, as products change and people decide they like tea better than coffee—heaven forbid—how does Timothy's fit into this new marketing strategy? Is that owned by Tim Hortons?

Mr Javor: No.

Mr O'Toole: It isn't? I hope I'm not—

Mr Javor: If you want to start a rumour that Timothy's is for sale—it's separate ownership. It's a different category in the coffee arena, if you will, in terms of the gourmet players. They are two separate companies. They were clever enough to name themselves after us to a point.

The Acting Chair: Thank you very much, Mr Javor, for satisfying the curiosity of the parliamentary assistant.

Mr Javor: We will improve our decaf, I promise.

FARQUHAR DAIRIES LTD.

The Acting Chair: I'd like to now call Mr Don Farquhar of Farquhar Dairies. Welcome to the committee, sir. We have 20 minutes to spend together.

Mr Don Farquhar: Good morning. I have reviewed Bill 33 and it seems fine as far as it goes. I'm not a fran-

chisee or franchisor, but it does seem to be some useful legislation. However, if you're going to introduce a bill, why not get to the root of a problem that a lot of these franchisees have, which is restrictions that franchisors put on them on where they can source products and services?

We are Farquhar Dairies Ltd, an independently owned fluid milk processor and distributor that was founded in 1935. We employ 40 full-time employees and have processing plants in Espanola and Mindemoya. Our historical trading area has been from Manitoulin Island to the south, Espanola to the east, Blind River and Elliot Lake to the west, and all communities in between.

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In June 1997, the provincial government opened competition throughout northern Ontario in the fluid milk business, including our area. This was done "to allow for the licensing of additional fluid milk processors and/or distributors and to enhance consumer choice of products." I'll be getting back to enhancing consumer choice of products. That quote was taken from the Ontario Farm Products Marketing Commission memorandum dated May 29, 1996.

Since June 1997, Farquhar Dairies have expanded our area throughout northern Ontario. We have been fortunate that many independent retailers and consumers have thus far found our products to be of high quality and we have been somewhat successful moving into these new markets. However, we have had almost no success getting our products on to the shelves of any major food stores or franchises outside our historical trading area.

We have had many discussions with various franchisees who wished to purchase our products for a variety of reasons. In some cases our pricing or service was better in their minds. In some cases the franchisees simply wished to purchase products from someone they perceived as local. Whatever the reason for wanting to purchase our products, in almost every case the franchisee or store owner was stopped from doing so by their respective head office because of national agreements between the franchisor and corporate dairies such as Parmalat, Natrel, Dairyworld or what have you—bigger dairies.

A couple of examples of this would be that there are several Country Style Donuts franchisees in our immediate areas. I have relationships with the owners. Because of the volume that we have, we buy some products from other dairies and resell them in our own market. We are able to offer the same product that these Country Style Donuts were presently purchasing from Natrel, 10-litre 18% cream, at a 10% discount, a greater volume of delivery. These franchisees were very interested, only to have the franchise head office stop them from buying from anyone but Natrel. This not only removed potential customers from me, but also made those particular Country Style franchisees less profitable.

Another example would be that recently we made a proposal to an owner of a Loeb grocery store here in northern Ontario. We proceeded to sell various fluid milk products to him—butter, ice cream—for the week of

February 10 to 17. That Loeb store's customers seemed to enjoy the choice, as previously there were only Parmalat products available in that store. The store owner expressed that he was very pleased with the turnover that the Farquhar products had on his shelf. It was then relayed to us that a Parmalat representative complained to the Loeb store head office, which is ADL Foods in Rouyn-Noranda, Quebec, which subsequently had us removed from the store. The consumer wants our product, the store owner wants our product, and we're very happy to service that store, and yet we can't. There is something fundamentally wrong with that.

These are only two instances out of hundreds where store owners, managers or franchisees were interested in, in the very least, having us quote on their business, only to be informed by their respective head offices that Farquhar products would not be allowed on their shelves at any price, no matter what the consumer demand.

Our repeated proposals to various head offices are ignored. For the most part, our phone calls and inquiries go unanswered. So while I applaud the Minister of Consumer and Commercial Relations in his attempt to protect some of the rights of franchisees, in my opinion this bill does not go nearly far enough. We cannot continue to allow large conglomerates with deep pockets to pay off all corporate head offices and franchisors, thereby eliminating competition.

Smaller regional companies like mine pay taxes and we employ people in communities where these grocery chains and franchisors operate. All we're asking for is a fair opportunity to bring our goods and services to market.

I recommend that this bill and the fair competition legislation be re-examined in an effort to make it possible for smaller regional companies to compete with larger national companies on an even playing field. We can no longer allow corporate dairies to buy shelf space at head office levels, making it impossible for individual store owners or franchisees to access products that their customers want.

I'm certain that this government, through the Ontario Farm Products Marketing Commission, did not intend to enhance consumer choice of products by allowing corporate dairies to pay head offices to eliminate competition. That is what is happening today. If these anti-competitive policies are allowed to continue, regional suppliers such as ourselves simply will cease to exist. I don't think anyone wants to see the dairy food industry completely dominated by any single supplier. I think politicians must ensure that fair competition exists for the franchisees and owners, for the suppliers, and, most importantly, for the consumer.

That's all I had prepared. But in listening to some of the other discussions this morning, I think it's important to note that when the gentleman was talking about franchisees not being able to make a living, it's been my experience that the real problem franchisees have is when a large dairy—not necessarily dairy; I'm talking dairy because that's the industry I come from, but it could be

pop or chips or bread or what have you—goes to the corporate head office and buys shelf space in all the stores across the country. They have to get that money back somehow, so they increase the price going to that individual franchisee. I can go into a franchisee tomorrow and give them a quote that's generally cheaper than what they're getting from their preferred supplier. The franchisees cannot remain competitive when they are losing money in the process. The franchise head offices are doing very well. They've received the cheque already.

The Acting Chair: Thank you very much. That leaves us about three minutes per caucus, and we'll start with the NDP.

Mr Martin: Thank you very much. Right off the top, I wanted to—I know you said it, but I want you to say it again, if you would. You and others like you, small local producers—we had the agriculture association here and you heard them earlier—are not looking for a special or privileged opportunity. You're just looking for an equal opportunity, a chance to get your product on the shelf so that consumers can have a choice and perhaps buy yours for whatever reason. Is that correct?

Mr Farquhar: That's absolutely correct. When I go and approach a store and quote them a price, I don't want the whole shelf space. I want a portion of the shelf space. Generally, our pricing and our service and our quality are as good as or better than the competition, yet we have absolutely no access to their shelf space.

Mr Martin: Yesterday in Toronto, Kevin Ryan with National Grocers suggested that it was a distribution challenge that was causing this to happen, that in order for them to deliver on-time, quality product to every community that they have a store in across Canada, they need to do this kind of Bay Street dealing that is hurting your particular business. You're suggesting today that it's not, that it's about money.

Mr Farquhar: I would suggest to Mr Ryan that if he would open a channel of communications with my company, I'm sure we could show him that it's easier to deliver product to Kap or Timmins or what have you from Espanola than it is from Quebec or Toronto. I'm sure I could do it as cheaply or cheaper than their present suppliers.

Mr Martin: I just wanted to say quickly, if I might, on your last comment about who actually was making money in these transactions, that it's certainly not the franchisee and it's certainly not you.

Mr Farquhar: That's correct. And, I might add, it's not the consumer.

Mr Gilchrist: Thank you for your presentation. It's kind of interesting. On the one hand, we're hearing the message that all the shelf space is going to these national chains, but then you use terms such as "but they're not competitive." If Beatrice is my only choice and they're giving the same shelf space allowance to Loeb that they're giving to Dominion stores that they're giving to everyone else, presumably they are competitive. It's at a higher price. Perhaps what you meant to say is the

consumer is not benefiting from any perceived competition out there.

Mr Farquhar: The pricing at the store level would probably be the same throughout the community, whether it's a chain store or not, but they control all the sales. The consumer has one choice of what product he's going to buy.

Mr Gilchrist: Right. So it's a question of choice.

Let me ask you this. In this bill, we're proposing to make it mandatory that there be far more complete disclosure than there's ever been before. If you were a prospective franchisee and I was required to disclose to you that I'm going to keep all the volume rebates, I am going to effectively have a price to you that's 10% higher than you could supply locally, and marry that with the ability, the absolute guaranteed right to associate. So now all of the Loeb stores can get together.

Is it not likely that putting those two things together, the information and the power to negotiate as a more equal partner, without the government coming out with a law to say, "You must have 5% or 10% or 20%," and would it not make sense that the nature of that business relationship would change if we gave these powers to the franchisees?

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Mr Farquhar: It could very well change. Why not just give the franchisee the right to purchase product from whomever he pleases?

Mr Gilchrist: I guess because I hearken back to my Canadian Tire days. I don't want to suggest that's the be-all and end-all, but there were many comparable examples, where it didn't make sense to ship a bag of salt for \$2 that was going to take \$5 in freight from Goderich all the way to Thunder Bay. They would let the dealer in Thunder Bay buy it. If there was somebody packaging salt that was more competitive for northern customers, they could do that. On the other hand, sending a package of screws doesn't really cost an awful lot. So Canadian Tire went to the Orient and bought millions of packages of screws. Sure, I know that somebody could have a clearout on a different brand name for this week and could have come in and offered me a better deal, but it would have made no sense to change your national marketing for something like that. Do you not recognize that it's almost impossible for the government to micromanage which products should have greater local exposure and which shouldn't?

Mr Farquhar: I agree. I think it should be up to the company. Using your example, if they can buy packages of screws in the Orient for a cheap price, if there's a screw company in that community, even if their prices are somewhat higher, should they not be available to the consumer in that location?

Mr Gilchrist: I guess my question comes back to you: Where do you do the trade-off where you lose the ability to send a national message? When you walk into a Canadian Tire store, they want you to know not only that you'll find the same products, but they actually put them in exactly the same spot in every store. They want that

common marketing vision to be part and parcel of what you know to be Canadian Tire. So I guess there's a trade-off there. If I went into a Canadian Tire store in one community and I found one brand of drills, and I wanted to buy parts or accessories for it and I couldn't find it in the next store over, that's far more confusion than there is strength.

Mr Farquhar: I suppose you could have both types of drills, if there is some local affinity for that one product that particular store owner wants to have. Shouldn't it be up to the store owner to have a choice to put that product in his store if the consumer demands it?

Mr O'Toole: Would there be any difference dealing with a Loblaws corporate store or a franchise store? In both cases you'd be isolated because of the corporate—

Mr Farquhar: Basically, if it's a corporate store owned by the company, you have absolutely no choice. The managers are very strict. They will follow the guidelines of their head office. I hate to say they're a glorified stock boy, but they do not make a lot of decisions for themselves. If you go into an owned store, a Loeb store, a Tim Hortons store, something like that, the manager will at least talk to you, possibly run it up the ladder to their corporate head office. Nine times out of 10, the head office will call him back, even though his pricing may be better or service may be better, and say: "No, we have corporate contracts in place with other suppliers. You are not allowed to buy off that supplier."

Mr O'Toole: The future ability to associate may improve that, though.

Mr Farquhar: It may. I really don't know.

Mr Brown: Thank you for appearing this morning, Don. For those on the committee who don't know, you should try Farquhar's ice cream. Farquhar is a major employer in the constituency of Algoma-Manitoulin, particularly in the eastern part of the constituency, and have been an important family business and family in politics in the area.

I'm interested in the payoff for shelf space and other corporate payoffs that may be made. Do you have the opportunity to make those? Can you go into the independent grocer and say, "Listen, Bud, I'll pay you the equivalent for shelf space in your particular store"? Can you do that?

Mr Farquhar: If I had that kind of money I probably wouldn't be in the dairy business; I'd be golfing in Florida right now.

No. In my own area we're dealing with a limited number of stores. A company like Parmalat or Natrel—and I'm certainly not knocking their products or anything like that—simply has the opportunity to go into a head office like National Grocers and say, "We're going to bid on your entire chain of stores throughout Canada, and for the ability to service all those stores, here's the cheque." They have to make that money back somehow. So when they go into that individual store, their prices to that individual store owner are inflated. I can easily go into that store owner and beat their price, very simply, and most of those store owners would like to buy my product.

The price is better, generally the service is at least as good, and the consumer knows our products—we're are a local company—and they would like to buy from us. They can't do it. That fundamentally is the problem I am here to talk about today.

Mr Brown: Essentially what is happening here is that there would be a hidden commission, and it goes to the franchisor and not the franchisee. So the consumer, the franchisee and local distributors all lose.

Mr Farquhar: That's right.

Mr Brown: In fluid milk, though, we are in a rather unique situation in northern Ontario. I don't believe there are many, if any, independent dairies left in southern Ontario, are there?

Mr Farquhar: There are not too many in southern Ontario and there are not too many in northern Ontario. We have had a couple close in the last couple of years. It's a very competitive market. We believe that at Farquhar's we run a fairly tight ship. There is a Beatrice plant in Sudbury. If you put us against them, that plant against our plant, we would probably come out very close in cost to put out a litre of milk. We simply don't have the resources to buy shelf space and make national contracts.

If it continues like that, I suppose there will be only one or two national dairies left. When all the dairies go, and there is no processing in northern Ontario, farms will be next. If all the processing is done in southern Ontario, I think it's very likely that they will be shipping milk on a daily basis from northern Ontario to southern Ontario for processing. It's a snowball effect, you see.

Mr Brown: We just learned from the Algoma federation that the number of dairy farms is down dramatically. I have an estimate that the amount of quota is down by about a third in the Algoma district, so your point is well taken.

The Acting Chair: Thank you very much, Mr Farquhar. We appreciate your coming to the committee and sharing your views.

The committee stands recessed until 1:30 pm.

The committee recessed from 1208 to 1333.

The Acting Chair: I'll bring the committee back to order. I trust we all had a chance to take part in that beautiful day out there. There was some suggestion we should move the entire hearing out there.

Interjection: So moved.

The Acting Chair: We won't put that to a vote.

WISHART AND PARTNERS

The Acting Chair: Our next participant is Wishart and Partners, Mr Gerald Nori. Gerald, welcome to the committee. We have 20 minutes to spend together.

Mr Gerald Nori: Thank you very much, Mr Chairman. The reason for my appearance before the committee is I guess partly nostalgic in the sense that you may have recognized the name of the firm, which is Wishart and Partners. Arthur Wishart was a member of the Legislature from this city for many years and also

became Attorney General and was Minister of Commercial and Financial Affairs at the time the Grange report was introduced. So we felt it was appropriate that we should appear, in his memory at least, to make some comments in connection with something that Arthur held very dear in terms of wanting to bring in some legislation to correct what he saw were very definite requirements for legislation in this field.

I am appearing basically in support of both Bills 33 and 35 and, as I unfold my comments, I think you'll see where I do deviate from 33 in support of 35.

It's a little bit difficult to understand how this very important segment of commercial endeavour that has the potential of touching and affecting so many people has escaped any type of control over the years.

We recently acted on behalf of a franchisee in a matter that happened in the city of Sault Ste Marie that brought home to us the necessity for some type of action in this field. The nature of the relationship was such that the franchisee was kept primarily in a state of indebtedness throughout the relationship by virtue of the fact that the franchisor was able to control the wholesale price at which goods were sold.

As a result of that, of course, the franchisee never made any money and was constantly indebted to the franchisor and at one point, for reasons that still aren't very clear to us, the franchisor decided it was time to maybe end the relationship, at which time the franchisee was called to a meeting at which the franchisee thought they were going to be talking about a marketing plan for the future. The meeting was held at a local hotel. During the course of the meeting, which was off premises, the franchisor moved a crew of people into the franchise premises and locked the doors and took over the cash receipts etc, so that the franchisee within about an hour found that they were dispossessed. That resulted in a fairly significant lawsuit, which quite frankly the franchisee could ill afford under the circumstance, because there is a huge inequality that takes place in these circumstances.

Normally, what you have is a relatively unsophisticated, underfinanced and probably marginally educated franchisee, in terms of management, fighting against a very large corporation, well financed, well managed, and it's not exactly an equal playing field—unless that franchisee can find the means to fight, and that's difficult because going to court these days, even though I'm a lawyer I don't mind telling you, is an extremely expensive and frustrating experience and should be avoided if at all possible.

In any event, that certainly brought home to us the fact that there was nothing out there to protect this particular person under these circumstances and quite frankly made us a bit of an ally, although I personally espouse being a free enterpriser. I don't think I'm totally laissez-faire, and I do believe that there are circumstances in our economy when an interjection of some kind is warranted.

You've probably heard everything that there is to say on this subject and I don't intend to bore you, and I will

leave with you a printed version of my remarks, but there are a few things that I'd like to really emphasize and feel that if you are going to bring in some legislation, which I hope you will, you should at least take these things into consideration.

The upfront disclosure is extremely important for the prospective franchisee to know what they're getting into. It's interesting to look at that comparative that I think the employees of the committee prepared, which I thought was very helpful. It was interesting to note that the most extensive disclosure statement is enforced in the United States, that great bastion of free enterprise to the south, and it's a very comprehensive document that I felt sets out at least the minimum of what should be disclosed. Disclosure up front is extremely important, because there is a lot of information that comes to the franchisee, but I don't think it's the kind of information that they're necessarily responsible for. A disclosure statement made within the framework of legislation would be a totally different animal.

There has to be investor protection. It's quite evident from the material that I saw in connection with the committee's work. I think I saw a figure of something like \$45 billion to \$50 billion in annual sales in this industry and something like 500 franchisors and 40,000 franchisees. If we stop and think about this a little bit, we've set up the Ontario Securities Commission for the purpose of protecting investors in this province. There is protection in the marketplace from the point of view of forcing prospective vendors of shares to make a complete disclosure and to have their prospectuses vetted by the Ontario Securities Commission.

1340

I don't see any difference between a franchisor out hustling and selling franchises and somebody out in the marketplace selling shares in some marginal mining or manufacturing adventure. I don't see the difference. We've already got the infrastructure there. I don't know why we can't force a franchisor, who intends to sell to the public, to file a prospectus and have it approved by the securities commission under similar circumstances to the guy who wants to go and develop some moose pasture.

It's interesting that in the Grange report there was a recommendation that they set up an entirely new infrastructure. I forget what they were going to call it, but I think it was the bureau of franchise or something. I don't believe that's necessary, under the circumstances. You've already got the infrastructure. You've got the securities commission and you've got staff. It might mean a bit of additional workload, but basically the infrastructure is there, the expertise is there, the know-how is there, and it would just add another layer for them to become involved in. I think that's an extremely important protection for investors in our province, and I believe that all of you believe, probably strongly, that the reputation of Ontario as a place to do business and a place where investors will be protected, is an important feature. It's interesting to note that Bill 35, which I believe is being

sponsored by Tony Martin, our local member, contains a provision for upfront vetting of the sale of franchises.

Another item I would emphasize is fairness in dealing. This is pretty big stuff. As I said to you a little earlier, you really have a very uneven playing field here, and I think that fairness in dealings is extremely important. In our experience, we've found that what happens is that the franchisee comes into our office and he or she has stars in their eyes. They've been out there, they've been sold on the concept or have seen it operate elsewhere. Trying to get them to concentrate on the documentation—because when the documentation arrives, it's usually a stack about eight inches thick with lots of legalese and totally loaded in favour of the franchisor. To get that franchisee to sit down and talk about those documents is very difficult, almost impossible. They just want to get on with business as soon as possible, and they don't want to pay the legal fees inherent in getting to the bottom of their relationship.

I think it's interesting that in that circumstance the Grange report does a reverse of onus. It says there has to be fair dealing, and if there isn't fair dealing, then it's up to the franchisor to show, and I quote, "that the contract between the parties was fair." In other words, the onus shifts, not from the franchisee to prove they were treated unfairly but to the franchisor to prove that franchisor dealt with this individual fairly. I think that's an extremely important concept. It goes on to say that the franchisor's conduct was "equitable in the circumstance." So you have this onus on the franchisor, at that point, to prove they dealt with this person fairly.

I think that would lead to this: If there was a provision in the statute that called for an ILA—anybody who is a lawyer will understand what an ILA is; it's a certificate of independent legal advice. That would mean the franchisor would get a certain protection as well, because the franchisee would have to go a lawyer and would have to have that lawyer read those documents and would have to sit down and understand what those documents meant, because that lawyer would then have to sign a certificate that that person in fact read the documents and understood them. So there is some protection as well for the franchisor. I think the reversal of onus plus an ILA might go a long way to getting to the point where the franchisee actually understands what they're doing. I'm convinced that most of them really don't, because of the fact that they've got stars in their eyes.

I think a method of dispute resolution is extremely important. I'm going to say this, and I'm probably going to be taken to task for it, but it's very difficult and expensive to find justice in the courts these days. You've probably all experienced the fact that unless you're in small claims court, going to court is a very tiring, time-consuming and expensive proposition, which frankly should be taken into consideration in these circumstances. I think you would be well advised—Tony has put what I think he calls mediation in his bill, and I believe that that's an extremely important factor. There should be mediation. There should be the ability to call in

a mediator to try to resolve a difficulty that has arisen. If mediation doesn't work, then it should be arbitration rather than court proceedings, because court proceedings in the uneven playing field you are involved in here are going to murder the franchisee. He or she is never going to make it, because they will outlast them and out-sophisticate them. If we can get dispute resolutions out of the courts, I think it will help the franchisees immensely.

The other area that I think is extremely important is to provide an exit strategy. What I mean by that is that under certain circumstances there should be the ability for a franchisee to get out of the relationship. Whether it's as a result of the arbitrary termination of the franchise by the franchisor—the example I just gave you—whether it's arbitrary refusal of assignment or renewal of the franchise by the franchisor, or the death or incompetency of the franchisee, under those circumstances it wouldn't be difficult to provide that the exit and the terms of the exit have to be determined by arbitration rather than in the courts. I think that would give the franchisee some modicum of protection from being overwhelmed in this relationship.

The other thing you should really give some thought to is that there's a problem with control of pricing. I know of franchises where it's not only a question of controlling the product that is going out the door—the coffee or the doughnuts or the hamburgers—it's everything that goes into that franchise. The meat counters, the ovens, the refrigerators—everything has to be bought. Even though the franchisee might be able to source those goods within his or her own community at prices that are superior to what the franchisor is selling them for, they are prevented from doing that. What that does is put the franchisor in a superior position, relative to the pricing, at the cost of the franchisee.

Those are really my only comments. I hope I've been of some help. I think you have heard all these things before, but I thought it might be worthwhile, at least for the memory of Arthur, that I come forward and let them be known. I'm frankly very appreciative of the effort Tony has put into this. He's been an important factor, and I'd definitely like to support his position. I see Bill 35 as going a bit further than Bill 33, and I think that's important.

The Acting Chair: Thank you very much. We appreciate the historical context of your visit as well. Certainly the Grange report was one of the first times this came forward. That was an excellent report on the subject.

Mr Nori: Actually, I was surprised.

The Acting Chair: We have about one minute left for each caucus, if that works.

Mr O'Toole: Thank you, Mr Nori. I really do commend the history and significance, and we did have a familiarization with the Grange report and with the background of what I would classify as sort of party indecision. Nobody has had the courage to really find the balance. I don't mean that critically.

Mr Nori: No, no. It's true. I think that is what has happened.

Mr O'Toole: We're in the same boat, trying to find a balance that protects the consumer, be it the consumer of hamburger or the franchisee. They're actually both consumers.

One suggestion I recall is the abuse of power position. You call it the reverse onus position. Does that not just exacerbate the civil litigant issue? To establish the reverse onus issue, then you have a corporate, perhaps American, senior in this thing—

Mr Nori: I would see it as just the opposite. I would see it as the big guy now having to come into court with all the resources and proving that the treatment was fair under the circumstances. That's a tremendous onus for the little guy to prove. The other thing is that the documentation is never there. The documentation is always in head office, and you never know whether you're getting the whole story. So I think that's an extremely important concept.

When I spotted that in the Grange report, I thought, "Boy, there's something that really would have some meaning in this legislation to equalize the playing field," because it is tremendously unequal.

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Mr O'Toole: I just wonder, if I may, Chair—

The Acting Chair: No, you may not. Mr Brown.

Mr O'Toole: Very abusive.

Mr Nori: You should file a complaint.

Mr Brown: Thank you for appearing. The other side of this, of course, is the entrepreneurship of actually becoming the franchisor. I guess we sit here and think about McDonald's and some of the huge franchisors, but certainly business people in northern Ontario have gone on to franchise their products. Usually that's not where they started at in their heads. They started a business and it worked and they found that the franchisor might be the way to go through the franchise system.

With what you've just told me, do you think that would inhibit the Vic Fremlins of the world over here to franchise his Lock City Dairy throughout Ontario?

Mr Nori: Vic Fremlin? That wouldn't even slow him down to a walk, Mike. If you look at the number of mining ventures that have started in northern Ontario, I don't really believe that would be a big inhibitor. I think we have to keep our eye on the ball and make sure there's a balance between protecting the public and leaving the marketplace open for the entrepreneur.

Mr Martin: Thank you very much, Gerry. That was an excellent presentation and, having worked on the bill, I couldn't have done the defence of it any better.

But I just wanted some comment from you on an issue that you didn't mention, and I think it's important that we deal with it at this time. It's the whole issue of gag orders. You know and I know that the person you referred to in your opening comments was gagged. I asked the—

Mr Nori: I would appreciate it if you didn't take that implication from that, Tony.

Mr Martin: OK, sorry. Anyway, we know that gag orders exist and they are out there. Maybe I shouldn't go there, but—

Mr Nori: I'd prefer that you didn't.

Mr Martin: OK. You can refuse to answer, but I'm going to lay it on the table anyway.

The Acting Chair: The questioner is immune from it, but I'm afraid your position may not be just quite as clear as that.

Mr Nori: May not be as immune—they're very sensitive to that, Mr Chairman.

The Acting Chair: But I think you've made your point.

Mr Martin: You can refuse to answer, but the question actually is your view on gag orders.

Mr Nori: I guess I wouldn't have a view because gag orders are used not only in these circumstances but in many other circumstances as well. They're a very valid legal tool and they do lead to settlement, Tony, in circumstances where there might not be otherwise the opportunity to settle. So I would not attack gag orders as such as a settlement tool in a court case.

The circumstances in the story, I'm told—it sometimes does lead to a favourable settlement for the litigant or the claimant, and I don't think I would attack the gag orders as such. I don't think it would be a good idea, quite frankly, to include it in the legislation.

The Acting Chair: Thank you very much for appearing. We certainly appreciate your presence.

Mr Nori: You're quite welcome. It was a pleasure.

The Acting Chair: I liked your suggestion on the SAC. That was great.

SAULT STE MARIE CHAMBER OF COMMERCE

The Acting Chair: We now have the Sault Ste Marie Chamber of Commerce, Mr Pascuzzi. Welcome to the committee. We have 20 minutes together.

Mr Ben Pascuzzi: Thank you. I would also like to thank the committee in advance for allowing us to appear before you today.

My name is Ben Pascuzzi. For the record, I am also a lawyer at Wishart and Partners law firm. However, I am not speaking today on behalf of any particular client or my involvement as a lawyer. I think my colleague Gerry Nori, with his vast years of experience compared to my youth, canvassed that far more completely than I ever could hope to do. However, I do sit on the board of directors of the Sault Ste Marie Chamber of Commerce and act as their legal adviser, and it's in that capacity that I'm speaking to you today.

The Sault Ste Marie Chamber of Commerce considers itself the recognized voice of business here in Sault Ste Marie and considers any proposed legislation or regulations that govern franchises to be of keen importance and interest to the members of our chamber.

The relationship, however, is more complex than simply that between the franchisor and the franchisee, and that is especially so in a small city like Sault Ste Marie, which is relatively isolated in the north. I'm sure you'll find this if you travel to other places in the north. There is

a real interdependence and interrelationship between the businesses. In other words, when the local franchisee uses local products and local companies for services and goods, it's those same people and their employees who turn around and go to the franchisee to buy the hamburgers and doughnuts and whatever else might be involved. Certainly we see here in the Soo an economic impact on the community by the franchisees through direct employment and direct involvement in the community, as well as through their spending of dollars in the city.

Some of the things I'm going to be outlining to you are based on my discussions and consultations with the various members of our local chamber of commerce. We have over 850 members currently in our chamber. Some of the things I'm going to say you probably have already heard from past speakers. In fact, I would imagine some of your past speakers are probably members of our chamber. Some of the issues my colleague has already touched on as well. I don't think it hurts for points of emphasis to touch on some of them again.

Basically, in talking to the various franchisees, it's interesting that no matter what type of industry I was talking to and what type of product or service they were involved with, you start to see common themes or problems come up with the various franchisees, both those that are still currently in business and those that are unfortunately no longer in business.

The first issue of concern that was raised with me was the issue of full disclosure and material misrepresentation. What I mean by that, as my colleague and the last speaker touched on earlier, is that it's very important to have full disclosure up front. As lawyers, one of our jobs is to sit down with a client and review all of the documentation and financial statements, to be in contact with the accountant and any other person who can provide assistance so that the franchisee can understand exactly what they're buying into. This is true any time someone is looking to purchase a small business.

However, the feeling I got from speaking to various people is that it goes beyond the written documentation. The impact I got from various people I spoke to is that often what is said verbally or what is implied is different from what turns out to be in the written agreement. Granted, as Gerry Nori already outlined to you, it is the franchisee's responsibility to sit there and go through the documents. However, let's face it: We have to be practical. As was outlined to you already, people are getting into a new business; they're excited, everything smells like roses at the beginning. There's a tremendous amount of detail to do with a countless array of issues. So what the franchisor says to the franchisee in a verbal sense and leads him to believe is very important. The message I got from our local businesses that are franchisees is that often what they thought would happen in the event of a particular situation arising isn't necessarily the case.

Another issue that came up that I think it probably serves to just touch on again is the complexity of the franchise agreement. As a lawyer, we like legalese because it gives us a chance to explain it to our clients and

it's partly what keeps us working. But putting aside my lawyer's hat and looking at it from an individual's perspective, certainly there are times when I don't understand what the agreement is saying. With my skill and training, quite frankly, if I can't understand what the agreement says, there's probably a serious concern whether the people signing the contract can understand it.

1400

The next issue that came up again was the issue of fair dealings and standards of conduct. I think the previous speaker outlined to you a situation that arose with a particular franchisee. I made some notes here of different situations that have arisen. One example—and of course again I can't use any names or places—there was a franchisee who was basically taking over the franchise from another franchisee and ran into serious problems with regard to the lease. It turned out that the franchisor had always indicated to them, "We'll step in; we will lead you through the way." That didn't happen. The lease situation was rectified, but at the end of the day the franchisee was left with quite a large legal bill and really felt let down by the franchisor, not necessarily in terms of saying, "We're going to fly up our lawyers from Toronto," or Vancouver or wherever, but just in the fact of moral support and financial support at the front end, the idea that this is a team effort between the franchisee and the franchisor. However, it seems that sometimes when things start to go sour, the team only has one player on it, and that's the franchisee.

Another major issue, and one that I know you'll hear about from future speakers or have heard already from past speakers, is the ability to source local product. That's not only goods; that also includes services. Again, looking at the two bills, I believe that Bill 35, Tony Martin's bill, strikes a reasonable compromise. That is, unless there's an issue of trademark or patent involved, if the particular product does the job and the franchisee wishes to carry that product or use that local product, whether it's for direct resale or if there's a question of supplies—ie, cleaning supplies, food supplies—they should be allowed to do that. Any restriction, even in a written contract that has been agreed to between the franchisee and the franchisor, really is a restraint on trade and a restraint that the courts have in the past struck down.

The issue of services as well is important. Everybody can understand that from the franchisor's perspective, there are certain specifications that have to be met when you're designing, for instance, a store. However, let's take a very simple example. If a local franchisee requires a plumber to come in and do some plumbing in the store, as long as that work meets the specifications of the franchisor, and of course the general standards of any regulatory body, ie, a municipality, there doesn't seem any reason to me, from the chamber's perspective, why local services can't be used, for two reasons: the reason I already touched on at the beginning, that it's that local plumber and his or her employees who are the people who, if they're working, support the local franchisees and the businesses, and number two, from the franchisee's

perspective, that often what I've been told by franchisees is that the cost of the franchisor bringing in someone from out of town is inhibitive. In other words, the franchisee really gets a double whammy. One, they're told they can't use a local contractor in a particular situation, and two, "You're going to have to use the contractor we send up," from, say, Toronto, "and you pay for all of it." In one example I was told a local quote was in the neighbourhood of \$5,000 to \$10,000 and the bill from the contractor in Toronto was \$30,000. I know the cost of living in Toronto is significantly higher than in Sault Ste Marie, but that's awfully hard to justify to the local franchisee.

The next issue that came up and that again was touched on by the previous speaker is the whole issue of dispute resolution. Looking at Bill 35, Tony Martin's bill, there is a provision in there for mandatory mediation. I would reiterate the comments made earlier that the committee should at least look at the issue of mandatory arbitration as opposed to the courts as an ultimate remedy, for the obvious reasons already stated—they are less costly, they are less time-consuming—and, quite frankly, I think if you spoke to both corporations and unions in the labour relations setting, even corporations would admit that in many cases they'd probably get better decisions than they might get in the courts, because the arbitrator or the arbitration panel over a number of years develops a certain level of expertise in that area. There's certainly at least some argument to be made that you would get better decisions in the long run.

Looking at the labour relations model, I think it's a good comparison to make. Generally in contract law, two parties enter into a contract. If there's a dispute, you turn to the civil courts. However, we have recognized, as in the case of a unionized setting, that there are unique circumstances where the general or fallback way of resolving disputes doesn't fit the circumstances and may require a different way of settling a dispute.

I really think it ties into what we see happening in society generally. Certainly, when we as corporate lawyers draft a shareholders' agreement, we now put in mandatory arbitration clauses almost all the time, that the shareholders to the agreement agree to be bound by the rules of arbitration as set out by the Arbitrations Act etc. The reason we do that is we know, despite all the good intentions, that sometimes shareholders in small companies have fights. If there is a dispute, we're really doing them a favour up front by calling for mandatory arbitration as opposed to looking to the courts if that clause were not there.

Some solutions were presented to me from various franchisees I spoke to, to address some of the issues and concerns I have highlighted. The first solution is the reason we are all here today. Clearly, some sort of legislation is required. Again, I too consider myself a free-market person who likes to leave business people to their own dealings. We've seen many times that when the government gets involved, it can make a bad situation worse. However, the chamber, and people generally,

recognize that there are unique situations in contract law where the positions of bargaining power are so unequal that some sort of legislative framework is required to set out the rules of the game.

I think an obvious comparison in the provincial setting would be landlord-tenant legislation. We don't say: "You're an individual. If you want to rent a premises from a landlord, you make a contract and the terms of that contract govern and that's it." No, we have legislation in place because we recognize, especially in the case of residential tenancies, that the bargaining position and the level of sophistication between the tenant and the landlord are so great and the gap is so wide that some sort of legislative framework is needed.

Again, governments have tried to strike a balance between the two sides. However, there probably aren't too many people who would argue we could do away with that type of legislation altogether. I would say that in the case of franchises a similar situation applies, where the differences between the positions of bargaining power and the level of sophistication and access to resources are so great that some sort of legislative framework is required.

The things, which I call front-end solutions, are some of the things I have already touched on, that is, full disclosure up front, as I outlined before. Also, something came up about a cooling-off period. Quite frankly, based on my experience, which is limited compared to Gerry Nori's, I don't know how often a cooling-off period is built into an agreement. By that I mean something built into the legislation where after the contract is signed and everything is done, there is some sort of period, whether it be 60 days or 90 days, when a party can sit back and decide, "I've given this a second thought, I've looked into it further and I've changed my mind."

Normally, when you enter into a contract and sign it, you're bound by it. If you want out, you're probably going to get sued if you break that contract, unless there is some reason or cause. So a cooling-off period would probably seem appropriate, considering the circumstances in which we know these agreements are often entered into.

Third, what is important to the franchisees I spoke to is a right to associate. The fact of the matter is that some franchisees I spoke to aren't here today because they're afraid. They're afraid of repercussions from the franchisor if they were to come and speak publicly. Along those lines, they have similar fears about entering into any type of association with other franchisees, whether it be a general association or an association of franchisees within one company.

On the exit strategy, we have already touched on some of the things that should be looked at; that is, mandatory mediation and the possibility of mandatory arbitration.

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There is one other point I want to make here—and like a typical lawyer I have papers all over the place, but I was looking for one sheet.

Earlier I mentioned the restraint on trade. I know there are probably members of the committee who are hesitant in this age when we are trying to roll back government to some degree and eliminate bureaucracy and red tape which, when unnecessary and unwarranted, I don't think serves anybody's interests: franchisor, franchisee or consumer.

However, franchise agreements, even when entered into with minimal standards of voluntariness—that is, someone has to be mentally competent and be of the age of majority etc. To say, "Well, they signed the contract, that's sufficient," that if it's a really bad deal and a one-sided deal, "Too bad, you signed it"—the courts, in general contract law, not specifically dealing with franchises, have said, "No, that isn't necessarily the case." In fact, there are cases striking down agreements in restraint of trade that generally give the reason for intervention the public interest and protecting free trade. The criterion of validity is that an agreement should be reasonable as between the parties, and there is little doubt that the courts mean by this that they will exercise control over unconscionable agreements.

What I'm referring to here in restraint to trade is the idea of sourcing local goods and services, of being able to buy local products. The franchise agreements, for the most part, restrict that. However, the fact that they agreed to it doesn't necessarily mean this shouldn't be covered off in legislation, that there shouldn't be some sort of legislative protection. Even if you take a free-market view of it and say, "We're looking at this from the point of view of letting the parties negotiate as they want," you could argue that if you are truly in favour of a free market, then anything that's a restraint on trade goes against that. I think you will find that in the United States, in the legislation at the state level and in the proposed federal legislation, they look at this issue as well.

In conclusion, I would sum up by saying that on behalf of the Sault Ste Marie Chamber of Commerce, I'd like to thank our local member, Tony Martin, for pushing and sticking with this issue over the years he has served as a member. It's an important issue to our members. A great deal of new small business in Sault Ste Marie, as elsewhere, is in the form of franchises. It is a situation that simply is not like any other contract relationship and requires some sort of legislative framework to be in place.

The chamber of commerce, in consulting its members, has been given a loud and clear message that they want something in place, that they have concerns, that they need solutions, and that too often, even when the franchisee has a legitimate complaint or concern, they simply can't get it sufficiently addressed due to expense and time and all the other things that have been talked about.

Those are my comments. Thank you again for allowing me to speak to you today.

The Acting Chair: Thank you very much. Your time has been used up, so we won't have time for questions. But we do appreciate your attendance.

LOCK CITY DAIRIES

The Acting Chair: Next is Lock City Dairies, Mr Vic Fremlin. Welcome to the committee, sir. We have 20 minutes together.

Mr Vic Fremlin: I'd like to thank everybody for letting me speak today. I'm here to represent Lock City Dairies. I'm going to talk a little about our company. We are a grassroots company. We produce the raw product from our farms. We started as a third-generation dairy farmer in 1991, when the company that was selling our milk here in town left. We decided we'd try to build ourselves a dairy. We never did that before, so it was quite an attempt. We started from nothing and worked our way up the ladder.

I have no problem starting businesses. This is the third business I've started, but with this one, trying to access chain stores becomes a nightmare. You can get right in the community, be part of the community and spend your money in the community, but that doesn't necessarily mean you're going to get your product on the shelf. What happens is you have a store owner, a franchisee. If he wants to buy the product he's not authorized; he doesn't buy the product. From that standpoint, you have a lot of problems with being able to create more jobs, build, go on and on from there, and make your whole picture turn out right, because at the time, when it goes to go in there, you think you're going to end up going in there—like, say, the Loeb stores. They got bought out by another franchise. I'd say I was in there at 70% shelf space. It ends up it goes back to, say, 10% shelf space. There are a lot of problem with the franchises and the franchisor when they have a lot of customer demand for that product.

In our area in Sault Ste Marie—I don't know if you people know about the Soo—it ends up that there's a lot of unemployment here. We need jobs here, and building local businesses in this area helps us quite a bit.

Basically, my biggest complaint is you never know from one day to the next whether you're in or out. It's kind of a situation of whoever makes the best deal down there, and it's not the small guy. The small guy never gets into the picture at all. You can phone down and try to get a meeting going with them, and the first thing that will happen is, "Well, the contract's already signed," and maybe "Good luck next time." So you wait, say, a year and a half and you phone again, "Well, you phoned too early."

"OK. When should I phone?" "Well, you've got to phone in another six months." You phone in six months and they'll tell you, "Well, you're too late." Then you say, "OK, I'll get you next time." You phone next time, say in another two years when the contract comes up, and they'll say, "That guy you were dealing with is no longer here." They change the guys.

You'll say: "OK, I better change my tactic. I'll come down there." So you end up going down there and when you're down there they don't see you. You think: "That's no good, so I'll try something different. I'll try and

arrange for somebody else to make an appointment with you." That doesn't work.

Then all of a sudden, say, the company is sold out to another company, "That contract's no longer valid so you're not eligible to get in there." And then when you do get in there and you're doing very well, all of a sudden that company sells out and another guy takes it over. Then another big corporation comes along and they sign another contract, and you're out of there again.

It's an ongoing problem here. If you want to talk about investing in northern Ontario, this business is a very tough business and we can compete at it. We've proven that. We started with not one bag of milk and now we're close to half the volume. That didn't come easily. It came by local support. In these franchise agreements, the store owners, or supposedly store franchisors, whatever they are, cannot make a decision. They want to make a decision, but they can't make it. The consumer wants to have a choice. In Sault Ste Marie, say it's 30-some years we've been able to buy one product in an A&P store up here. Thirty years is a long time to eat corn flakes, if you think about it. If you ate corn flakes for 30 years, you'd like to have choice, you know?

The book that I brought out today breaks it down in detail. A store that I dealt with, one store individually—I detailed it all so you can see exactly what you've got to go through to penetrate these stores.

1420

There are letters down and there are reply letters. Some of the replies are quite amusing. It ends up that my product is still not on that shelf. It was in there twice and it was taken out twice. The first time it was taken out because of a breach of contract after three months. The second time it was brought in and was taken back out, but it's supposed to go back in again.

That type of thing goes on in these franchise agreements. It hurts a local business like Lock City Dairies, and it goes down the ladder. It hurts not only my business but anybody who's dealing with me locally. I feel that I've provided enough information. If you go through all that I've given you, there's nine years worth of public involvement, support from the community, recognition for winning awards for business in northern Ontario. I find that these agreements with the franchisees and the franchisor are only one-sided. They've got to look more into fairness and respect.

I also have a franchise. It's a John Deere dealership, a Kubota dealership. I know what these guys are up against. I'm in support of making Bill 35 add in there so we can have a fair ballgame for the guys who are out there trying to make a living, for the community. I feel for those people.

The Acting Chair: That leaves us about three minutes per caucus for questions. We'll start with the Liberal caucus.

Mr Brown: Obviously it is a problem. We heard from Farquhar's this morning. We've known about this issue in terms of sourcing and providing consumer choice to the residents not just of Sault Ste Marie but all of Algoma

and all of northern Ontario. I think in some ways this is a more particular issue to northern Ontario because of the distances between the major communities.

What you're telling me is that the franchisee, ie, the store operator, doesn't have the opportunity to buy your product even though your price quite often is at least competitive and probably lower.

Mr Fremlin: It's competitive.

Mr Brown: That's likely because, at the senior levels of the corporation, they have made deals with the major dairy companies for shelf space and other considerations that go beyond just the actual delivery price to the door.

Mr Fremlin: These decisions are all made in Toronto. The guys who make the decisions aren't in our community. They don't know the demand for their product. Put it this way: I really don't care who puts their dairy products on the shelf as long as I can have mine on there for my company to be able to have a choice. Just make it fair, that's all. I don't want 90% or 80%. If I had a store offering me 90%, I'd say that 50% is fine.

Mr Brown: You just want the ability to compete on an even footing with the other corporations, and that doesn't happen because corporate headquarters deals are cut that you are frozen out of?

Mr Fremlin: Yes. If I do get on the shelf, it's in the corner at the bottom. I wouldn't do that to anybody. It's not fair.

Mr Martin: Thanks for coming today, Mr Fremlin. This is an issue that should concern all of us because it's about how we do business in northern Ontario. Your situation is an excellent example of how decisions that are made other places, how relationships that are sort of above and beyond us and out of our control, affect directly our ability to have a healthy economy going. There was a suggestion made this morning that local farmers and producers could put their product into the non-franchise stores. I know you've been doing that. You got your product into some of the gas stations locally, and it wasn't long after that that the franchisee discovered that people would actually buy milk at a gas station because you opened it up for people, and before you know it a deal is cut at the top level and you're out of there too. If this keeps up, there won't be very many venues left for you to go into. If we don't do something by way of this bill to give you some relief, how long can you hang in?

Mr Fremlin: Well, I like to fight a little bit too. This type of stuff gets on your nerves after a while. I think this committee that's sitting here today—I couldn't believe that I made it this far to talk about it. It needs to be addressed or eventually the big guy will always win. He'll do something. If he gets away with this, he'll win, but it depends on the committee here, what you're going to do. They'll always win, the big guy. He'll just keep at it until he's worn you out or he's done something. We're talking about gas stations; I put my milk in the gas station and everybody thought it was a big joke. All of a sudden the other company comes along and they took it out of the gas stations and put their milk in. Holy Jeez, I develop a market and then they figure it out so they go and get it in

the gas station, and all of a sudden a guy from Toronto tells the gas station owner, "Put in such-and-such a product." "I want to keep the local product in here." "Oh no, you can't do that. You're out of a job." Basically that's what he's saying. Most of these guys that run these franchises won't come and sit up here because they're scared for their jobs, they're scared for their houses, they're scared of all this stuff. I don't care, I'll say it. That's what happens.

Mr Martin: Can you briefly give us the My-T-Fresh Eggs story?

Mr Fremlin: My-T-Fresh Eggs was in this area for, say, a total of 30 to 35 years. They were the only egg supplier here and up until the last five years he and I used to travel to a few stores and state our case because I had milk and he had eggs. Matter of fact, he trucked milk for me for a while. All of a sudden he ended up selling his business. I couldn't believe it. He was telling me the problems he was having: He had 90% of the shelf space and then he had 50% of the shelf space and then he was down to 25% of the shelf space, and at the time he was at 25% he was telling me he had to truck his eggs in a 300-mile radius because he had to get rid of them. He said, "It's costing me too much," and finally it came down right to the end, he had only 25% of the total take of the shelf. He ended up selling out to a larger company and taking the hens and all the cages out. He's out of business. Now you've only got one choice of eggs in Sault Ste Marie and everybody knows what that is.

Mr O'Toole: Thank you very much, Mr Fremlin. I first want to extend my congratulations, along with the Premier and Minister Hodgson, for being the 1998 entrepreneur of the year. Looking at the CV here, you've really done a remarkable job of marketing. Mine is really more of a comment and I'll share my time with Mr Gilchrist. I mean it quite sincerely that you're quite entrepreneurial; that's evident. You're in competition with Farquhar, I guess?

Mr Fremlin: No.

Mr O'Toole: Not to be smart, are you in the same kind of deal?

Mr Fremlin: I produce the raw product, OK? It is controlled by the Ontario Milk Marketing Board, but I have my milk picked up by the trucks that I own, along with other farmers, and we truck it down to Farquhar's and they process it. But at the present time I have built a dairy in Sault Ste Marie minus my processing equipment. The main reason for that is, if you look, you'll see the building going up there—

Mr O'Toole: Yes, I see that here.

Mr Fremlin: —but I do not have the processing equipment. I have everything but—

Mr O'Toole: But you're going there.

Mr Fremlin: —what happened was when these chain stores flipped around, I ended up going from 90% shelf space down to 10% shelf space, and in some cases none. At that time that hurt my project, so now I've had to go and fight for my market back. It ends up that I'm only short like my processing equipment. I've already spent

millions of dollars. You're talking maybe \$300,000 to \$400,000, depending on how I do it.

1430

Mr Gilchrist: I do applaud you for the thoroughness with which you're applying yourself to this project. The one thing missing from this brochure—I certainly agree with the destinations you've suggested people should be addressing their concerns to, except there's nothing on there listing the head offices of the various food companies. If I might offer a suggestion, one of the most powerful things you could have done is if all of these letters had in fact been received not just by the local manager—who hopefully forwarded those, but I don't think we should make that assumption, to the head offices of Loblaw's and A&P down in Toronto. At the end of the day I've got to believe if they thought it was compromising their ability to sell more product in Sault Ste Marie they would have to seriously consider this. If they're bound in a certain contract, that's fine; maybe at the end of that contract things will change. But in the meantime, they were creative enough to get themselves into their current situation; presumably they could be creative enough to find a way around their Beatrice or Parmalat contracts. I strongly encourage you to make sure that the people who hear your message loudest are those who stand to lose the dollars from the customers who move elsewhere. But otherwise I congratulate you on what you're doing.

Mr Fremlin: Thank you. The book has some letters sent to head offices. That brochure you have there is old and I've created something else. There have been a lot of letters sent. One thing is, you'll never get a reply to what's going on.

Mr Gilchrist: Buy five shares and go to the shareholder meeting.

Mr Fremlin: Yes?

Mr Gilchrist: Seriously. Go to the shareholder meeting, stand up as a shareholder and ask why the sales in their stores in Sault Ste Marie are suffering because they have made a decision that may very well be profiting a buyer—I mean, we haven't mentioned around this table in the first two days that one of the other things suppliers do is golf trips for the purchasing buyers to exotic locations at this time of year, all sorts of incentives to do business with them. If that is truly prejudicing their ability to sell more product in Sault Ste Marie, I think the other shareholders deserve to hear that.

The Acting Chair: Thank you very much, Mr Fremlin, for coming and presenting to the committee. We appreciate it very much.

JIM FITZPATRICK

The Acting Chair: Our next witness is Country Style Donuts, Mr Jim Fitzpatrick. Mr Fitzpatrick, welcome to the committee. I was wondering if it was the Jim Fitzpatrick I used to work with, and it's not.

Mr Jim Fitzpatrick: Not the same guy. There are a few around though.

The Acting Chair: Yes, it's not an uncommon name. Please proceed.

Mr Fitzpatrick: I've been a Country Style franchisee since 1984, for the past 16 years. One of the things that I was interested in presenting is from that perspective as it applies to what I perceive to be the fairness or the unfairness of relationships within the franchise system, specifically in terms of Country Style, its limiting in terms of what you can do. The entrepreneurial component of a business is not the franchisee's responsibility but the franchisor's responsibility. So I've always been a problem to them because I'm just on the other side of the coin; I'm more of an entrepreneur than I am a franchisee per se. I operate another business completely in the manufacturing sector, so I don't have a day-to-day activity within the store component.

The limitation is that your supply side is controlled. At the outset it wasn't because they didn't have a commissary and central distribution system, but as those elements were brought into play that became a mandated requirement over and above the language within the documents of the contract. From an unfair point of view, I think the fact that they can add to the agreement as they deem appropriate, without any recourse to the franchisee—the franchisee must conform to whatever the franchisor projects as being in the interests of the global franchise and everyone involved.

There is not a poll or survey taken among the franchisees. It's something that's determined by the franchisor, and that's the long and the short of it. Those changes or requirements are not tested to identify that they are profitable or appropriate or market-driven vis-à-vis the cross section of Ontario, where you have very different market circumstances from the north, from the metro areas, from the Ottawa area and the Thunder Bay area and so on. Those are all quite distinct markets, yet the franchisor applies his regulations on a broad-based set of rules that they develop. That to me seems to be the most onerous of responsibilities, because whether you can afford it, whether it's profitable for you or not, they just apply that.

I also think it's not reasonable that a franchisor should be able to give you a set of figures that are representative of what you can expect to do in a store without that having been proven. They can develop a set of figures that don't necessarily have to do with reality. It's their hypothetical assessment of what will happen that is the basis on which they develop the numbers. You have really no recourse after you've gotten involved in the project and find that those figures are not accurate and don't represent what your circumstances are. You're hung out to dry, because there isn't a 120-day guarantee once you find out what the problems are, and even though they are represented, you can't do anything about it. You really can't do anything about it because of the financial commitment you would have to make in order to legally try and disrupt the issue, and, if you did, the kinds of consequences you would have in the ongoing dealings with the franchisor. Once you get in, your hands are tied. You

have no room to manoeuvre in there whatsoever. Whatever the document says is what it's going to be.

There are the supplementary issues of the document vis-à-vis inspections or new elements that are introduced into the system that you must incorporate into your operation at your cost, and whether it's appropriate and works or not doesn't have anything to do with the reality of what you must do under the guise of it all being the same, that if someone walks into a facility in Toronto or North Bay or Sault Ste Marie or wherever, they're always going to be the same. I can appreciate and I buy into that idea as it would apply in terms of the décor and those kinds of things, but there are certainly definite issues around menu offerings and things of that sort that although you're mandated to do and you're inspected upon that—and the issue comes up where if you aren't doing what they've specified, you have 15 days to correct it or you're in violation of your franchise. So you can be on the outside looking in pretty fast if you decide it's not appropriate or you can't do it. It isn't very often that they bring the hammer down on the basis of a 15-day turnaround time, but they are certainly evaluating you on that premise.

1440

For example, there's a system within the organization that establishes the levels of stores and the proficiencies and so forth, and if you don't conform to all of the mandated offerings, for example, you're going to be de-rated without a doubt. Again, you have the responsibility to make it up right away and correct whatever the deficiencies are.

It's certainly a "buyer beware" circumstance. I don't think government or anybody else can hold our hand unreasonably or give us the kinds of safeguards that one would like to have in a perfect world. But by the same token, I think there should be certain disclosure elements that are absolute: that you cannot represent yourself to be providing a service in terms of a franchise agreement without having case study history of your situation under these circumstances and being required to present those facts to a prospective purchaser so that they really have the correct story and not, "Well, this would be nice." You look at these numbers and say, "This would be great," and many times people are overenthusiastic about those numbers and what they can do.

As a little sidebar, in terms of a typical person wanting to get into business for themselves, you can point out a whole series of deficiencies and problems they are going to encounter, but they'll believe they can change that, that it's not going to happen to them. It happened to somebody else but it won't happen to them because they're going to do it differently. It doesn't get to be different; it gets to be the same.

But that would be my concern: that information that is presented is factual, from actual experience. That's my pitch today. Thank you.

The Acting Chair: Thank you very much. That leaves us about three minutes per caucus, and we will start with the NDP.

Mr Martin: Thanks for taking time today. I know your schedule is busy. I've tried to find you a few times. As Vic often says, it tires me out. Watching you tires me out.

Most of what I hear you speaking of today is, it seems to me, in the area of relationship. Bill 33 calls for disclosure. It doesn't require, though, what Gerry Nori suggested, some kind of a securities commission that would vet that to make sure it's true. That's not called for here. There is disclosure, and if you misrepresent yourself, you can go to court; you can be charged. The bill also has a piece in it about—and I think it's an important piece; I'm not diminishing it for a second—the right to associate. But would simple disclosure, without it being vetted, and the right to associate resolve some of the issues you've raised here today, or would we need to go further?

Mr Fitzpatrick: Very definitely, I think the franchisor would behave differently under the knowledge that the likelihood of somebody taking him to task in today's environment is much higher than it would have been 10 or 20 years ago. Therefore, if they're misrepresenting something and you find out that it's a misrepresentation after you're in—because that's when it's going to develop—if you have some recourse under the law, then you should be able to get satisfaction. The fact that you can do that, it seems to me, would inhibit an inappropriate behaviour in the first place, but with the fact that there isn't any, there's no consequence. The little guy doesn't have pockets deep enough to take them on. Not only do you have a bad relationship as you go down the road, but you're going to have to take a pot of money along with you to go and do battle. But if there is law that you can turn to in terms of, "It's wrong," and therefore you can initiate an action that is much more likely to succeed at a cost that you can deal with, that would remedy the problem.

Mr Martin: Would you support the contention of the two previous speakers that some office needs to vet the disclosure document and that there needs to be in place some kind of dispute resolution mechanism?

Mr Fitzpatrick: I'd like to see a dispute resolution mechanism, but I don't think there is any public body that could be constructed that would have the expertise and the speciality to be able to vet the cross-section of things that a franchisor might develop, or the broad cross-section of franchises. I don't think it would be reasonable to expect a board to be able to review that in any kind of a timely fashion or with the necessary expertise to really say, "No, this is wrong." If it's there, and once the franchisee is in place, knowing that is available to him, that the representations that are being made need to be fulfilled, then if they aren't fulfilled, he in turn can go to his counsel and determine: "Do we have a case? Do we have a situation here or don't we? If we do, there's a vehicle or an avenue to do it with." But to require the franchisor to present it to an independent board, which is going to determine the reality and the truth of what they're saying, I don't think they have that kind of expertise.

Mr O'Toole: Thank you very much, Mr Fitzpatrick. I think I have a Fitzpatrick in my riding who has a doughnut franchise as well. I'll put you in touch.

Mr Fitzpatrick: I hope he's doing well also.

Mr O'Toole: It's Fitzpatrick's Donuts.

Mr Nori, a previous presenter, touched on a very important consideration, and that's the Ontario Securities Commission looking at vetting the document or the prospectus. What's your view on that? That is some kind of existing authority that would look at a disclosure document and see if it was somewhat reasonable. I'm sure would be; it would be written by a lawyer. Probably that's not true, either. It would meet the existing laws. Quite seriously, what do you think of having an independent body that looks at it like a prospectus? As you say, it is "buyer beware." There's a due diligence requirement on the part of the franchisee.

Mr Fitzpatrick: Yes.

Mr O'Toole: You can't just, like you say, hold them from cradle to grave, that kind of thing.

Mr Fitzpatrick: No.

Mr O'Toole: And charge a fee, but require that as part of it, having an independent opinion and also some accounting assessment. Like you said, they give you a prospectus saying, "This is your market, this is how many doughnuts and coffees you're going to sell," and it turns out that it's about 30% right. What do you do then?

Mr Fitzpatrick: From a prospectus point of view, it seems to me that it would be difficult. I think that if the corporation is going to sell the shares of that corporation on the public market, obviously the securities commission would have a responsibility to review and identify the appropriateness and the truthfulness and so on of that information. But when it comes down to a store situation and a site selection, there are so many variables that can come into the picture that the due diligence, I'm afraid, falls more heavily on the part of the prospective franchisee. Rather than assuming that reputation does it for you, ie, assuming that the franchisor has vetted the site, assessed it, done all the proper studies to determine that site is a good site for that product's distribution—you have to rely on them, without a question. But I don't know who could tell you that they've made the right decision or that they haven't made the right decision.

Mr O'Toole: It's difficult. I understand.

Mr Fitzpatrick: It is really difficult to be subjective to the point where you would approve or disapprove. From a corporation point of view, in terms of if they do it according to some rules divulging information that it be accurate, I think if those two issues are made mandatory before they can negotiate anything, then the person has an opportunity and is made aware, "Be careful here because there's some information that you'd better rely on yourself to determine."

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Mrs Boyer: Thank you for your concerns. I gather by what you were saying that you are in favour of Bill 33—

Mr Fitzpatrick: Yes.

Mrs Boyer: —and you are mostly interested in disclosure. You've mentioned that you would want more factual information, I guess, from the franchisor.

Mr Fitzpatrick: Yes.

Mrs Boyer: Could you elaborate on that? I know you've answered Mr O'Toole on some points, but would you—

Mr Fitzpatrick: For example, if they were required to give you a cross-section of historic data pertaining to the stores they operate—not necessarily corporate operations; that is to say, it's not the corporation running the store but it's the franchisee running the store—if they can give you a cross-section of that, they could give you the corporate store and franchisee stores so that you have some factual information to rely upon, that this has been an actual experience. It's not somebody sitting back at head office trying to put a package of information together that looks good in terms of where your costs are, the percentages and all of those kinds of things as you look down the financial statement that they present to you and you say, "This looks very good."

In my case, when I was going in and was presented with the information, I subsequently discovered that the payroll couldn't be met if I was paying the baker. You can't run a doughnut store without having a baker, but the presumption is that you're the baker. Your money doesn't come out of the payroll; your money comes out of the bottom line, really. Under that circumstance, the projection of what your costs are is not realistic, because you yourself should be paid for the work you do. You don't get \$50,000 to bake doughnuts, but you certainly get \$10 an hour to bake doughnuts. You know what I mean? Under those circumstances, the effort and work that you are expected to put in ought to be part of what the program demonstrates in terms of its cost factors.

Mrs Boyer: You would want to see much more easily the facts so that you could compare them before you go ahead with that type of contract.

Mr Fitzpatrick: Yes, exactly.

The Acting Chair: Thank you, Mr Fitzpatrick, for taking the time to come in and see us today. We appreciate it very much.

FERME AVICOLE ROBERT LTÉE

The Acting Chair: Next we have Mr Robert and Mr Brownlee. Welcome to the standing committee, gentlemen.

Mr Brian Brownlee: Thank you, Mr Chairman and members. I'm Brian Brownlee and this is Mr Robert. He's an egg producer in Timiskaming. I was at a TFA meeting. He was there with some concerns about what was going on with his production and he told me about it. I learned about these hearings and I thought this was a really specific example of what is happening to the producers in the north. I had him draft up a letter and got him out here today. I'll read you the letter of his concerns and what has happened in his situation, and he'll be here to answer questions.

As others have stated, the bill is there, and what we're looking for is going further to preventing large companies from disabling local producers from getting on the store shelves.

We would like to introduce ourselves as Ferme Avicole Robert Ltée. On October 1, 1997, we acquired a poultry business producing fresh eggs. We had a grading station and were delivering the eggs to the local market every week around our area in Timiskaming. People were very happy that we were supplying our nearby stores for two reasons: The first one is that they were able to buy locally. Our customers appreciated the fact that they were helping out the local agricultural community. The second and more important reason is the freshness of the eggs. These eggs were made available to the customer the same week they were produced by the chickens.

Personally, we think it makes a lot of sense to us and also to the customers we were supplying. Each week was going by and we were constantly fighting and working hard to keep our customers happy. This turned into a big problem as time went on because bigger companies, for example, Gray Ridge and Son Ltd, kept moving into our territories and cutting our necks in the store and making deals with franchisors to keep us off the shelves. These companies wanted to supply all of northern Ontario, which we think should not be happening. In some cases, they were dropping their price when it came to selling the eggs on the market and it forced us to get out of the grading business.

We went to another store, My-T-Fresh, out of Iron Bridge. We were able to get them to grade our eggs. We were still able to compete. So we decided we would buy graded eggs from Iron Bridge. The deal was working well. We would send our eggs down one week, they would be graded and we would receive them back the following week in our containers, with our name on them, and therefore we would be able to keep our customers happy. However, then Gray Ridge came along and bought up My-T-Fresh, as we heard earlier tonight, closing that grading station down. We were then forced to send our eggs to Gray's grading station in St Mary's. There was no way he could guarantee it would be our eggs that would be returned. To make matters worse, it was only a matter of a couple of months and we were receiving rotten eggs in our containers, which were delivered to the store and sold to our customers. This caused the stores to no longer accept eggs with our label on them.

We are now forced to sell all of our eggs to Gray Ridge at quota price and can no longer approach grocery stores. We find we can no longer make a living off a business on which we once could. We feel we should be able to. What is happening now is not only unfair to us, but also the customers are getting cheated as well. They are forced into purchasing older eggs and, even though they know that, they have no choice. This is why we're writing this letter and getting involved, to make you realize what people are going through in the north.

For solutions to our problems, we need regions in which a producer may be able to sell their eggs. An egg producer would be applied a zone or have a certain area. They would have to fill up the demand in that area and perhaps get more eggs, if needed, or vice versa. This way everyone would be helping each other and everyone would be happy creating a few jobs in the north as well as in the south.

Thank you for being comprehensive and taking the time to listen to these concerns.

The Acting Chair: Thank you very much. That leaves us about four minutes for each caucus for questions.

Mr Gill: I don't have too many questions. This seems to be a basic rule that's happening in the marketplace right now. I'm not trying to see it as a franchisee-franchisor problem. It's more of a big guy-small guy problem. To be honest, I'm not sure how we can try and help you. Perhaps you can lead us on that. We are trying to address Bill 33 in today's agenda. Some of the other members of the committee can perhaps shed more light on it. I think it's a situation which is happening in every business. I know it's terrible from the standpoint of small business being gobbled up by larger business, but to be honest, I'm not sure what we can do in terms of Bill 33. I don't want to hold out hope falsely. I just wanted to make that comment.

Mr O'Toole: If I may pick up from Mr Gill's point, we have heard the concerns with respect to the supply side of this issue. For me, specifically in the agricultural sector, it's very important because my riding has the same issues really: size and also access. You've got the federation of agriculture plus you're a supply-managed business, as were the dairy people. You have some issues internally to look at with respect to the board, the quota, the numbers within the region.

I suspect it's more than appropriate to listen to your producer group, commodity group, and their solution to this. I've heard what you've said here, the regional aspect of it, that it's an appropriate type of activity to regulate. I think there is some motive for the government to consider that; that is, looking at the economic development of Ontario and indeed regions of Ontario is a responsibility, I suspect, to some extent, of the government to facilitate. Mining, pulp and agriculture come into that whole resource sector kind of commodity.

I'd be very happy to entertain how it could be done, because the moment you cap a market you sort of say: "You're the big guy. You've got all the business. So there's two egg producers. Blow away all the little egg producers." Do you understand? It's a very complicated monopoly kind of regulation. You're suggesting that a government that's supposed to facilitate competition is going to end up being responsible. You're going to get everybody coming to you saying, "Give me a little piece of the northern market," or the eastern, whatever. Do you understand? It would be nice to sit down and write a rule and say it's going to keep everybody—it would keep you happy, and the other 19 egg farmers are going, "Well,

where's—" you know? Do you understand? I'm prepared to listen, for sure.

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Mr Brownlee: You see, what's happening more is that they are going to the store and they are going to the franchisor, and there are lots of stores where you couldn't put eggs.

Mr René Robert: They wouldn't take the eggs.

Mr O'Toole: Poor quality too?

Mr Robert: At one point, but at one time it was fresh eggs from the week.

Mr O'Toole: I understand completely. Thank you.

Mr Robert: But all of a sudden what's going to happen is, they are going to go up the other way. There's another one quitting up there. He's got a grading station, so he's going to service that right up to the north there. The quota from there is going to go to Ottawa, and he is going to service the grading right up to there. One guy is going to service all the north, so suddenly we're going to be out too; I'm going to be out someday. It's going to happen. He's going to throw me out; I'm only a drop in the water. He's got 300,000 birds; I've only got 12,000, so I'm a drop in the water.

Mr Brownlee: And you're saying you can't have individual areas where there are groups, because you're kind of supporting that guy. You're supporting a local farmer here, you're supporting a local farmer in the next area and the next area, and if you don't do that, this is what's happening. One big guy comes and takes the whole area, and then who's to say down the road? Right now he's selling eggs at whatever, but when there's no competition there—

Mr O'Toole: I believe I'd be prepared to listen to the marketing board's solution to this, looking at regions and regionalized outcomes, because it is more than just that the government can't tell the marketing boards, who have made these decisions. I really do appreciate more than ever before the supply-side issues on this particular disclosure requirement. Let's put it that way.

Mr Brown: Someone once said, I think wisely, that the purpose of competition is to eliminate competition. I think in many ways that's what is happening all across this province and perhaps the world. The mechanisms that the government has to deal with that are perhaps becoming more limited. That does not mean we should not be trying.

I think in many ways—I was reflecting on this a while ago—the turn of this century is much like the turn of the last century, in that the turn of last century in North America was focused on anti-trust, breaking up large companies, providing that there was true competition in the marketplace. What we are seeing, unfortunately, with dairy products being frozen out of certain retailers, eggs being frozen out, is that the real competition within the marketplace is gone, which means consumers don't have the choice of price, quality etc, or supporting their local industry, if that is what they choose to do.

I'm perplexed, though, at trying to come to the solution to the questions you've posed. They are real problems.

Mr Brownlee: If I could just say this: There were certain stores he couldn't put his eggs in, but there were stores where he still could. But then in terms of the big guy getting bigger and pushing out more and more—

Mr Brown: And the marketing power of the big guy to promote his particular product, where you are more limited in your ability.

The other thing, and I've had this conversation with some people, is that it may very well be worse before it's better. I'm familiar, and I think most people are, that the major auto companies are now going to Internet auctions to buy the parts for their vehicles. If that is happening in the automobile industry, you can almost guarantee that it will happen in every other industry as it comes along, and for a small guy to compete in that kind of situation is something I think government is going to have to address.

Mrs Boyer: I just had one or two points. I sympathize with your problem, and I can see, like everybody, that it doesn't really pertain to Bill 33, but there's only one question I want to ask. When you talk about Gray Ridge and Son and the other company, My-T-Fresh, were they franchisors?

Mr Robert: They were two grading stations.

Mrs Boyer: Yes, but they were privately owned?

Mr Robert: Yes. But you see, being that I—

M^{me} Boyer : Vous pouvez parler français, si vous voulez.

M. Robert : Moi, j'envoyais mes oeufs à My-T-Fresh. En envoyant mes oeufs à My-T-Fresh, si lui passe puis achète la grading station à My-T-Fresh—il est sûr qu'ils vendent mes oeufs à My-T-Fresh. En effet, là il y a deux poulailleries. Ils ramassent les deux poulailleries en s'en venant—

M^{me} Boyer: Ils se mettent ensemble.

M. Robert: Oui, ils entrent ensemble. Là, il s'en va sur l'autre bord, là-bas, et il y a un autre qui lâche au mois de juin. Lui, il va s'en aller là-bas et le quota s'en va dans le bout d'Ottawa. C'est certain qu'il va avoir encore d'autres marchés là. En fait, c'est le gros qui grossit et le petit qui crève. Les autres ont crevé.

Quand on s'en va à des magasins, on n'a pas de chance. Il y en a des magasins qui ne veulent même pas nous donner la chance de seulement mettre notre produit là. Ça fait que, qu'est-ce que tu fais ?

M^{me} Boyer : Vous auriez peut-être—on vous suggère d'aller à un palier du gouvernement, à un autre comité. Thank you.

Mr Martin: I'm a little bit disappointed that the members of the committee still haven't heard that in part V of Bill 35 there is a provision that calls for allowing franchisees to source product wherever they can get it at a competitive price as long as it's not a trademark issue. That would give these folks what they're looking for.

So I'm going to be tabling, Raminder, an amendment—you can bet on this—at some point in this pro-

ceeding that will call for us to move beyond Bill 33 to resolve the issue that we are hearing. We've heard over and over again here today of local producers not being able to get their product onto the shelf of some of the bigger stores in their areas so they can be in the market and customers have some choice. That's all they are asking for. They are not asking for preferential treatment or to enter into an anti-trust legal debate or whatever. Simply put, they want the franchisee to have the freedom, if he or she chooses, to go to you and say: "I want your eggs in my store. I'll buy them from you at a good price and I'll sell them, and we'll both make money," and the economy of the north will be better served when that happens.

I'm hoping that the rest of you, having heard today so intimately and in such an articulate way from the folks who are directly affected, will recognize that we need to do that, because if we don't, there will be a few more—as a matter of fact, I suspect that even before we get to considering the amendment, which will be in April or May sometime, there will be a few more small producers in northern Ontario put out of business. That will be really unfortunate. What I'm saying to you here today is that that is my intention, to table that section as an amendment to Bill 33.

You know that there is discussion about to begin at the federal level regarding the Competition Act which will hopefully have some impact on this, but it's a way down the road. That's going to take a year or two or three to unfold, and who knows what's going to happen at the end? There will be an election in between, and if they elect Reform—that's political, and we won't get into that; this isn't a political forum here—we're done like dinner. But we have an opportunity here at this time to go a distance to resolve your issue if the committee will accept as part of this bill part V of my bill, which says that franchisees, where it's not a trademark issue, should be allowed to purchase product where they can get it at a competitive price.

The Acting Chair: Thank you very much. We appreciate your coming and bringing this issue to the table.

SAULT STE MARIE ECONOMIC DEVELOPMENT CORP

The Acting Chair: The next witness we have is the Sault Ste Marie Economic Development Corp, Duane Buchanan. Mr Buchanan, welcome to the committee. We have 20 minutes together, if you would like to make a presentation, and we will fill the remaining time with questions.

Mr Duane Buchanan: I'll be fairly brief, unlike my usual character.

The Acting Chair: That wouldn't make you a lawyer, would it, just to get that out of the way?

Mr Buchanan: No, it wouldn't make me a lawyer. I'm a director of the Sault Ste Marie Economic Development Corp, commonly referred to as the EDC, and I'm presenting here to this standing committee as a

representative of that organization. As you will understand, the EDC has as its main objective the creation of new business and jobs for Sault Ste Marie.

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The EDC is concerned that franchise agreements may be an underlying cause preventing locally produced products from having access to local markets through national grocery chains. When any local business is being disadvantaged or excluded from the local marketplace for whatever reason, the EDC is naturally concerned, particularly when these local firms have competitive, equivalent products, produced within the area by local people. This is particularly important where local producers are willing to expand their business locally, to produce value added products and to employ additional people in our community. The EDC is merely seeking equal opportunities or so-called level playing fields for them.

The circumstance of Lock City Dairies is used in this presentation because that story best illustrates the nature of the problem we want to describe. The EDC is not an advocate for any business over another business. Fair and equal access to markets for competitors and eliminating one competitor's ability to banish another from a market, as is occurring here and as you've heard a number of times today, is the objective.

I'm going to refer to the Competition Act in my presentation, recognizing that it is federal legislation and that it's not relevant to your consideration, but I believe it has an implication and I'll show that as I proceed.

The issue: This presentation alleges that a natural element of franchise agreements is to promote exclusivity for products and services. This creates a barrier to marketplace competition, sometimes denying market access to other fully qualified competitors. Bill 33, in dealing only with fairness between franchisor and franchisee and being silent on fairness to the public and to competitors, fails to deal with a systemic problem that these agreements cause.

This presentation uses as an example Lock City Dairies of Sault Ste Marie and its inability to access the market locally through national grocery chains. Its problem is by no means unique, as other presenters have informed and will inform you. What applies for Lock City Dairies applies to many other companies, many of which are not in the dairy business. Lock City Dairies has made a presentation to this standing committee, so many of the details of that situation have been presented.

The implications of franchise agreements are broad-based, extremely diverse in nature, as we've heard, and complex to resolve when one considers the many facets of franchising. However, ensuring that qualified producers have reasonable access to national grocery store supply systems does not seem to be complicated to achieve or unreasonable to expect. Qualified suppliers are those, of course, that would be able to provide required quality and volumes consistently over time at a reasonable price.

Lock City Dairies supports community activities, as does Beatrice Foods. The business is an ever-expanding enterprise, spending capital on buildings and equipment. Through growth, it employs additional local people. Even during recent construction of its plant, it employed local firms and about 200 people for several months. Local people, as in all communities, like to support their own businesses. It works both ways, the community supporting business and business supporting the community.

The EDC appreciates the fact that Beatrice Foods products are widely available and they are good quality, without any doubt. Beatrice has local distributors working as independent contractors to supply its products. It also sponsors local activities and it employs some local people. This presentation would not change that. It only argues for equal access by local producers to local shelf space, and particularly that local producers not be excluded from this space by foreign-owned national firms.

A difference between Beatrice Foods and Lock City Dairies is that Beatrice Foods purchased and closed dairy production in Sault Ste Marie and laid off all of its employees. It now supplies from facilities in other communities where people from those communities are now employed. It distributes its products here through local contractors. That's fair business practice and a choice that Beatrice Foods have made, the best business option for their situation, and it's their choice. Again, Beatrice Foods is an Italian-owned company with national distribution. On the other side, Lock City Dairies, however, is attempting to build a local dairy to process local milk and employ local people in the process. In effect, it is attempting to reverse the process that Beatrice Foods undertook, by building a dairy here. Lock City is owned locally and has strong ties to the community. It pays its taxes locally and spends its money here as well. Sault Ste Marie needs business that employs people and pays taxes.

All milk in Ontario, as you've heard before, is purchased from farmers by a central agency and sold to dairies for processing and packaging, each under its own brand name. Dairies or distributors market their own brand and offer their milk for sale under their own packaging. Each dairy must meet provincial quality, processing and product requirements. Currently in the Sault Ste Marie area, a milk farmers' co-operative collects milk and delivers it to Farquhar Dairies on Manitoulin Island, where it's processed and packaged for Lock City Dairies, which trucks it to the Soo for distribution and sale. This is a temporary situation. They hope to have their own dairy here if they are able to acquire sufficient volume.

In spite of the foregoing, no case should be made that Lock City Dairies should replace Beatrice Foods as the local supplier. That would not be in the spirit of fair competition. But Beatrice Foods should not be allowed to ban local dairy products from local shelves either. It's understood that agreements between Beatrice and national food chains effectively do that. In the interest of consumer choice, there should be a place for competition in this market.

Gaining access: National chain store managers locally are powerless to provide display space for locally produced products. This is a prerogative of their head office or perhaps a function of their franchise agreements, to decide what will be displayed and the amount of access that will be allowed. Mr Fremlin, president of Lock City Dairies, tells us that every attempt at contacting senior executives at A&P and Food Basics has been futile. None will answer letters, none will return phone calls, and none will participate in a meeting to resolve this issue.

When he made his presentation, you'll notice in his document—I've reviewed the document, and in it there is his general presentation, but following that there's a letter to Mr James, a vice-president with Food Basics, which provides a chronology of all of the letter-writing and all of the activities and all the attempts at contacting people at Food Basics and A&P. In the end, it states that if there is any argument with the factual nature or this, would you please respond in writing prior to this date, and to my knowledge they have not responded to that. There are copies of letters following that document. That's the reference that I'd like to make.

It's understood also that with some national grocery stores one must pay fees to secure display space, perhaps more money for better space, but there is no known access to make these arrangements. Mr Fremlin has provided this committee with a record of fruitless attempts at making supply arrangements with A&P and Food Basics, as I've just mentioned. He has also supplied the committee with documentation of unanswered correspondence to Food Basics from our federal member of Parliament, members of the provincial Legislature and the mayor of Sault Ste Marie. A&P and Food Basics executives seemingly have no regard for federal and provincial members of Parliament or the mayor and have hereto declined to respond to them or to consider their requests.

Franchise agreements made between the national food distributors and their suppliers are secret and certainly unavailable to anyone outside the companies. I'm not suggesting there is anything wrong with that; it's just a fact of corporate life. So it's not known what the source of the problem experienced by Lock City Dairies really is based on, only that there seems to be no door on which to knock to participate in the game.

Legal aspects: The following excerpts from the Competition Act suggest that franchise agreements have the effect, when carried to a logical conclusion, of violating terms of the Competition Act.

Competition Act: "An act to provide for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition." Sounds familiar.

"The purpose of this act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable

opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.”

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These two articles strike at the heart of the problem, and it seems that producers should be filing a complaint under this act and they would likely be successful. In fact, MP for Sault Ste Marie, Carmen Provenzano, has filed a complaint on behalf of Lock City Dairies and a plan to undertake an investigation has been announced by the Competition Bureau approximately a week ago.

Again, I'd like to say this presentation alleges that a natural element of franchise agreements is to promote exclusivity for products and services, which creates a barrier to marketplace competition, sometimes denying market access to other fully qualified competitors. Bill 33, in dealing only with fairness between franchisor and franchisee, and being silent on fairness to the public and to competitors, fails to deal with a systemic problem that these agreements cause.

Recommendations:

(1) It follows that the Franchise Disclosure Act, which is intended to control and govern the relationship between franchisor and franchisee, is silent with respect to competitors and interests of the general public which are being harmed by the inevitable outcome of franchise agreements. Bill 33 must be active and consider the interests of customers and qualified competitors in a similar and as important a manner as franchisors and franchisees.

(2) With the creation of new franchise agreements, it's proposed that there be a requirement to file a declaration stating something to this effect: "The parties have read, understand and are in compliance with both the Competition Act and the Franchise Disclosure Act." It should be required that legal personnel drafting the agreement be a signatory as well. This would tend to avoid future systemic contraventions and fix blame for contraventions when they occur.

How they apply the act you can't legislate in this way, but at least this would require that they have a ground zero fair chance.

(3) Through Bill 33, require that franchise agreements which contravene either the Competition Act or the Franchise Disclosure Act be unenforceable in Ontario.

(4) The Competition Act guarantees that customers have the right to be offered alternatives where they are available and be allowed to make choices without interference. It's charged that there is interference in this process and that the Competition Act is likely being violated. Bill 33 is silent on these issues. It should dictate policy with regard to franchise agreements and should provide enforcement options.

That's my presentation.

The Acting Chair: That leaves us about two and a half minutes per caucus. We are starting this time with the Liberal caucus.

Mr Brown: I'm just looking at your recommendations. I think we are fully agreed on the problem and that it needs to be addressed.

Mr Buchanan: I don't pretend to be any sort of expert on this, but I've done a little research and intuitively that seems to be some sort of solution to the problem, or at least partially.

Mr Brown: As a matter of fact, you agree with some of the earlier presentations that we've heard today in terms of how to make sure that the franchisee has an equal footing and is able to make some of these decisions and goes in with his eyes really wide open to the franchise agreement.

We had before us earlier a similar presentation in terms of having lawyers sign off on the agreement. You would be, I take it, in concurrence with what they're saying?

Mr Buchanan: I believe that they should interpret that and determine that it is in fact compliant with the law.

Mr Brown: The problem I have, not with this presentation but with the scope of it, is that we are dealing here with two animals. We are dealing with the franchise part of it. That's our scope and that's what we should be doing. We're also dealing with companies like A&P, which are not franchised operations as I understand it. Am I incorrect in that? They're directly managed by the—

Mr Buchanan: My information is that they keep using their agreement with Beatrice Foods, for example. Whenever Lock City Dairies tries to gain access, they say, "We have an agreement with Beatrice Foods which doesn't allow us to provide access for you." Whether that's formally a franchise agreement, it certainly sounds like one to me.

The Acting Chair: That wouldn't be a franchise agreement.

Mr Buchanan: It wouldn't?

The Acting Chair: No, it would be a business arrangement. It's quite common in the food business.

Mr Brown: Anyway, that's a second problem. But I guess Food Basics is a franchise operation. That's one place where we should be focusing. I commend you on your presentation. I think your recommendations are particularly helpful to the committee.

The Acting Chair: Mr Martin, two and a half minutes.

Mr Martin: You raised, again, what has become a bit of a sub-theme here today in terms of franchising and the impact that franchising arrangements can have on the economy in general. We heard just before you that, in fact, this whole piece of activity is rather even more invasive than I had thought when you consider that the folks from Timiskaming were sending their eggs to Iron Bridge to be graded. Once that grading station got closed down, then they had to send them south and back up again. It just gets more ludicrous as you hear the stories, in my view.

I think you make some excellent recommendations here, ones that we can take a look at very seriously. I just want to know: Did you look at section 5 of Bill 35 at all and the piece that I have in there which calls for franchisees to be free to source product where they can get it competitively as long as it doesn't break a trademark?

Mr Buchanan: I only had access to what was on the Internet, which was the basic bill. I didn't have access to anything else.

Mr Martin: In Bill 35, which is the bill that I have tabled three times now, there is, in part V, a piece that says that. Mr Brown perhaps made a statement that this somehow is set apart from the franchise relationship that we're dealing with. It's not. A franchisee's ability to source product where he can get it improves his potential to make a profit, so that everybody in the end is better served.

I'll try and get you a copy of Bill 35 so you can take a look at that provision, because it will do, certainly to some degree, what you're calling for here. You're right. There needs to be a serious look at this at the federal Competition Bureau level. I'm really happy that Carmen is—

Mr Buchanan: There is an investigation underway, I understand.

Mr Martin: Yes.

Mr Gill: Thank you for the presentation. I think that one of the things that came out loud and clear today is the local sourcing of the materials from two points of view. One is from the supplier's point of view—they want to make sure that they have access to the marketplace—as well as from the franchisee's point of view, because they want to have access to lower cost. One thing we should keep in mind—yesterday it came up in our meetings—is that the franchisor has an interest where they take the top portion of the money up front. The franchisee is more concerned about the bottom line. That came out loud and clear yesterday.

We tend to forget sometimes that the franchisor, in buying centrally or whatever methodology they use to buy these things, has some kind of a mechanism built in where they have kickbacks, whatever you want to call it. That is part of their profitability. If they were to lose that, don't forget that they will add into the original cost of the franchise. We might be defeating the purpose thinking that the local franchisee might be benefiting from local supply. Yes, they will be at a local level, but they might end up paying extra for the franchise operation because the franchisor is looking at their bottom line, so-called.

Mr Buchanan: I have heard a number of references to the fact that people buy their space. I don't know whether that's a private deal that individuals make or whether that's a corporate deal. We keep getting reference to that. For most people who want to get access, it's probably the least expensive way to gain access, if they can in fact gain access. Whether it's an above-board approach, I have no way of knowing.

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Mr Gill: I was at some other meetings recently that had something to do with the CNE in Toronto. They are going to have only Coke products and are totally excluding Pepsi products. Those kinds of arrangements are being handled every day.

Of course we'll look at Mr Martin's proposal, part V of his Bill 35, and see if we can somehow open up the marketplace. I'm not sure what can be done, but we'll certainly look at that.

Mr O'Toole: I want to be brief here. I warn the Chair that I have two points I want to make.

We've heard about the supply-side issue. We understand that. It isn't exclusive to the agriculture sector. The supply-side issue may be anything from, "You buy your tickets from us," to "You buy your boxes from us," to "You get your stuff from us," that sort of issue. It's not just milk or eggs; it's a whole Pandora's box.

Mr Buchanan: I understand that.

Mr O'Toole: I would say one thing, though, and I must get this on the record: I do appreciate your four recommendations. It's very important for us to have real information to work with. But if you look specifically at the Competition Act, which you refer to in three of them, there are two or three things that I would encourage those here, as well as Mr Martin, to look at. The Competition Act, of course, is federal and is to ensure there really is competition. There are clauses within that act, which I'm familiar with, that deal with trade practices. It's a legal kind of reference point, but it talks about abuse of dominant position, which is clearly the case here. You've got the big guy that runs the whole thing, called the franchisor—there's obviously an imbalance of power here—imposing certain kinds of what I would call unfair practices, which could get you into the reverse onus case that was talked about earlier.

With respect to those three recommendations, I would like us to take the responsibility of engaging Mr Manley, the federal minister, to look at the Competition Act, because it is up for review. It is no longer providing an appropriate marketplace in many areas for small business, which is important. I just want to acknowledge on the record that you are right on topic here.

The Acting Chair: Thank you very much, Mr Buchanan. We appreciate your coming in.

MRS JERSEY'S DAIRY

The Acting Chair: Our final witness is Peter Gass, from Mrs Jersey's Dairy. Welcome to the committee.

Mr Peter Gass: Mr Chairman, ladies and gentlemen, thank you for taking this first step in addressing some of the problems that exist in the food-processing sector here in northern Ontario.

We're a sort of unique situation. We are probably the smallest dairy in Ontario. Before we opened our doors about a year and a half ago, we realized that it was going to be very difficult to even hope to gain any access to supermarkets. What we did with our dairy is that we have

an attached retail section in the front of it. We have a full line of products we make as well as other products, usually from smaller, unknown dairies or from other suppliers that have difficulty getting their products into the supermarkets. We really try hard to have locally produced food in our store.

Mrs Jersey's Dairy, located in North Bay, Ontario, has been in operation since August 1998. We receive cow's milk and a small amount of goat's milk from local area dairy farms, and process both types of milk separately at our plant. We have an adjoining retail store. We are a very small operation, less than a million litres of milk per year, as opposed to some of our larger multinational competitors such as Parmalat, processing 100 million litres or more per year.

Like our competitors, we recognize that our profits are in milk by-products such as yogourt, sour cream and ice cream. Our slogan is, "Taste the local freshness." It reflects our belief that the milk produced on dairy farms in the near north, with the availability of the fresh air, grass and water of our region, and processed locally by qualified dairy plant personnel, provides both a top-quality dairy product for the consumer and employment for the people of our region.

We market 80% of our fluid milk, yogourt, sour cream, butter, buttermilk, whipping cream, coffee cream, ice cream and novelties to the public through our own retail outlet. The remaining 20% is distributed through wholesale outlets in and around the immediate area. These small stores come to us directly and pick up their milk themselves. We don't even own a milk delivery truck.

While this arrangement suits us at the present time, we wish to voice our concerns regarding the legislation under review with the Franchise Disclosure Act, since it has been referred to a standing committee. After visiting with the management of each of the eight supermarkets in the city of North Bay, with our population of 57,000, we have a clear understanding of how corporations pay big money in exchange for exclusive rights to supply their products to grocery shelves. Management of these individual franchises told us that these exclusive contracts result in money back on large orders which then can be passed on to the consumer. With consumer demand for lower prices, these large contracts make sense for all concerned.

We do not support increased government regulation of supermarkets. In our opinion, franchises should grant franchisees more flexibility in purchasing agreements so that each franchisee could be sensitive to local consumer demands. If pricing and quality prove to be competitive, it is reasonable to assume that consumers would prefer to support their local employment base by welcoming these products into their area supermarkets. In the North Bay area, all eight supermarkets carry fluid milk and a range of other dairy products that have been shipped in from hundreds and hundreds of kilometres away. Our processing plant receives milk from 30 kilometres away and can have it processed and on the shelves the next

day. It just makes common sense that for both health and employment reasons, this is a great deal for the local consumer. It is our hope that marketing locally produced goods will be an option made available to supermarket franchisees in the near future.

One of the nice things about owning a small business is that you get to do all of the jobs. Yesterday I was in the plant processing milk and two weeks ago I was able to go out and visit all of the supermarkets. I would like to just briefly review each of the comments that was made to us as we visited the various supermarkets. I won't mention any names—we weren't thrown out of any supermarkets—but I'd just like to summarize some of the comments.

The first supermarket: If his competitors carried our products, perhaps his head office would consider allowing some space on the shelf for us. Corporations pay big money to have exclusive rights and this is how this particular supermarket operates. I won't mention the brands that they carry. These were comments that were made to us and we recorded them, hopefully in an unbiased fashion.

We visited another supermarket. He called head office right away concerning carrying our yogourt and sour cream, and was told first of all to get a price list from us. Then we asked him what he thought our chances were of getting into their shelves, and his reply was "fair." You don't know until you go through the procedure. We haven't got back yet with the price list; we just wanted to get an idea of what the climate is out there.

We have a particular franchisee who, in his first year of operations, was bound with his contract. He said he'd have more freedom in August 2000. He's happy with the franchise arrangement. Exclusive contracts result in money back on large orders which he can pass on to the consumer.

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Another store here: locked into a franchise agreement and no chance of even getting into the door. For this store, controlled by a large supermarket chain in Ontario, the sale of milk is a particularly sensitive issue. There is little if any profit in fluid milk. The profit is in other dairy products. They sell a large volume of yoghurt. Most of their ice cream sales come from an independent ice cream manufacturer. If they had great customer demand for our products, they would approach head office but it would require a great deal of local demand. He felt it was highly unlikely that one of their dairy products suppliers in the store family would agree to giving up any part of its market share to a small, locally owned dairy.

This particular supermarket mentioned that the two suppliers give financial favours in exchange for exclusive carrying privileges. These corporations make their dollars in products other than fluid milk. He doubts that these players would be open to the idea that this store would carry another brand of yoghurt or sour cream. We could make a presentation, submit it to him and he would present it to head office. He did not want to get our hopes

up high; he thought our chances were very slim because of deals done in high places.

This particular supermarket, a quick response: "I can't. I'm locked into a franchise agreement, a purchasing agreement with our supplier."

Those are some of the comments just directly talking to managers or assistant managers. This is what the climate is like out there. As you can see from these comments, price or quality have very little to do with whether you can get your products into the supermarkets. Deep pockets and connections to supermarket corporate head offices have everything to do with getting your products on to the supermarket shelves.

In conclusion, I would like to address these closing comments to any supermarket representatives who might be here today. If you're not from northern Ontario, you're probably quite amazed at the tremendous space that we have between our communities. You also should be aware that most northern Ontario communities are struggling just to maintain current population levels. Our jobless rate is high. Each day, our brightest and youngest people are leaving for better opportunities in the south.

If you look ahead just five years down the road, I ask you, where will your future customers be coming from? Our small dairy in North Bay has been able to create seven jobs since we opened our doors. Seven families now have income and purchasing power and are remaining in the city of North Bay. They all buy their non-dairy products from our local supermarkets. If we could just get into one supermarket, we probably would hire two more full-time people and there would be two more families shopping at our local supermarkets. I believe without a doubt that it just makes good business sense for our local supermarkets to try to support northern Ontario food processors and allow their products on our supermarket shelves. Thank you.

The Acting Chair: Thank you very much, Mr Gass. That leaves us about three minutes per caucus and we start with the NDP this time.

Mr Martin: I want to thank you for coming. I know from your presentation how difficult it must be for you to get away for a full day like this, given all the jobs that you have to do and the effort that you are obviously putting into making a success of your business. We appreciate that.

You're one of the people who is going to make the economy of northern Ontario work. In my view, if we can help you as a government by creating level playing fields so that you can get into the market, consumers can have a choice and you can make some money and hire some people and do all those things that you've described in the ending of your presentation.

The economy of northern Ontario is quite self-contained and interconnected. Each of us depends on the other. We almost exchange services with each other. Where some outside entity changes that or takes too much of the money out, we're affected in a very serious way. I've suggested already today that this issue is key to any economy we're going to have in northern Ontario.

The member from Algoma-Manitoulin correctly says that it's not just franchise stores; it's big corporate stores too, because the same policies are in place. So even though the provision that I'm suggesting in Bill 35, which I have tabled, will be tabled as an amendment to this bill or some variation thereof so that we can solve this problem and will go a ways, there's a lot more that needs to be done.

I commend my colleague Carmen Provenzano at the federal level for taking this to the federal Competition Bureau, because he's absolutely right there. We need to do that.

Have you had a chance to look at all at section 5 of Bill 35 and to consider it?

Mr Gass: You'll have to forgive me. I haven't really had a lot of time to review that. I'm sort of an anti-government-type person.

Mr Brown: So are we.

Mr O'Toole: A lot of us are.

Mr Gass: I believe that if you were to bring the corporate heads of the supermarkets here with our northern food processors, within a day or two we could have this problem corrected. We could do it much more quickly than this committee, probably much more inexpensively. I don't think they're really aware of the problems. I don't think they are aware of the geography that we have up here. We're not their enemies. I sometimes think that food processors are considered to be an enemy of the supermarket, and I don't know why. But we can work together with the supermarket. Instead of saying, "Let me see you undercut Beatrice," why don't they say: "This is what we're paying now. Can you meet this price or can you do better?" Let's work our way backwards, because we can create 10 or 12 jobs in our community. That's what's going to solve the problem, and they don't seem to understand that; I'm not quite sure. But I believe if they were here and aware of the situation, that would be the way of getting this corrected.

The Acting Chair: I spent 35 years in the food business and, believe me, they understand.

Mr Gass: You might need a large stick.

Mr Martin: I'd like to go on the record here this afternoon as being a person who believes in government and believes that government has a role to play, and a very important role to play, in regulating markets and making sure that fairness exists in a marketplace and in communities.

We're here today because the big guys have been beating up on the little guys in the franchising sector of business. We have a couple of books here of stories that have shown up over the last five years in major news outlets across this province, some 4,600 families who have been damaged because the big guys will not play fair ball with the little guys.

I suggest to you, and I say this with all respect, it might be naive to think that you could bring the big guys to the table and convince them they should be doing something different. We're trying that right now in the gasoline industry and it's not working. Even Mr Harris

can't get them to the table, and I think he's their friend. So that's an issue.

This is an opportunity now for us to do something, to do the right thing. With your encouragement, having had your presentation, and Mr Gill has suggested he's willing to look at it, we might look at that section of Bill 35 or the recommendation that was made by Mr Buchanan earlier that maybe there's something else we might do. But we need to do something on this issue, or else the economy of northern Ontario is going to be hurt and families who are now doing business will find themselves not able to do it any more.

The Acting Chair: For the government, Mr O'Toole.

Mr O'Toole: I can hardly hold myself back from responding to your being sort of anti-government. I suspect we would all have some response to that, although it's not particularly on topic.

But I do think the agricultural sector, which in my riding of Durham is an important sector as well, are gifted with being entrepreneurial and inventive. We've seen that with many of the presenters here today, much like yourself, from the dairy and egg industries. So I understand that. You don't want government; you want government to get out of the way. I think if you were talking to the Premier, he'd say: "We're not government. We're here to change government."

1550

There's more to it than just that, and that's why this bill, after three successive governments, is actually here being discussed. You will not have it all one way or the other, and we all collectively, including Mr Martin, are trying to find a balance. Many presenters would say that balance is there. I know as a member of this government we will entertain improvements. That's why we're here. So your input is very important. It is a slow process to change the rules of the marketplace.

That's more of a statement in respect to your taking the time today to come and put a face to small business. We've heard a couple of things where I would encourage you, through the Ontario Milk Marketing Board and others, collectively, with the weight of your organization, to engage the supermarkets in dialogues within the regions of this province. The government can't do it on its own.

We've struck out to achieve three things: disclosure, which is bigger than you think. There again, there's due diligence required in that piece, on both parts. I think the right to associate and disclosure together—that is, all of you together, talking to the associations that now have a legal ability to exist, the IGAs or whatever it is, and talk about their common problems of supply—together with the fair dealing provisions which will be strengthened over time is a framework to improve something that we heard from a previous presenter has been around historically from the time of the former member here, who was the founder of the Grange report. It really goes back to the 1970s, talking about reforming the Franchise Act. So here we are. We're going to do it. It's Bill 33. We're listening. We are prepared to make amendments, and

your input and that of the others who appeared here today could be germane to dealing with the one issue of the supply aspects of franchise operations.

Thank you. If you want to respond, feel free.

Mr Gass: I believe this is certainly the first step. As I said, I believe we could accomplish a lot with having all parties here today. We could move this along more quickly, I believe. At the end of the day, you have to have a very practical, workable solution to the problem. If you legislate supermarkets to do something, how is it going to work? Is it going to work, or are they going to follow the letter right to the T? At the end of the day, are we going to create a mass of bureaucracy that might take six months to solve a little problem? I'm afraid of that part of it.

Mr Brown: How long ago did you found this business?

Mr Gass: About two years.

Mr Brown: You've made remarkable progress. We're talking about milk distribution, but if we were dealing with breweries, you would probably be able to get your product onto the shelves of the local Brewers Retail, I would guess, even though that's owned by the large beer corporations. You would be, I guess, a brew pub or something in that sort of scheme of things. What you need is, and we've heard it from the other dairies, the assistance of just having a level playing field. I can't help but in my own mind come to the conclusion that the other commercial considerations that are being put forward here, buying shelf space etc, can't be quantified in terms of price per litre, and that you have every opportunity to be just as competitive as the others. I'm not going to make a speech, unlike my other two colleagues.

Applause.

Mr Brown: That was my own people applauding.

Mrs Boyer: I thank everybody for your comments. I think you sort of wrapped up what I've heard today from about everybody who came in to talk. I can see the northern region is different because of the geography and everything. I think we'll have to look into putting something in this bill that gives the ability and the possibility for buying local products from the people.

Another thing that was common to all presentations was the guarantee of shelf space. That seems to be fair, and that came out of everything. So you're wrapping up with your comments what we've heard today. I'm really anxious to see if you're going to get answers from those head offices of the supermarkets that you've visited. So good luck.

Mr Gass: Thank you.

The Acting Chair: We appreciate, Mr Gass, your coming in to make your presentation. It's a very appropriate one.

The committee will now stand adjourned until Wednesday, March 8, when we will reconvene at 9:35 in the morning in the Delta Inn. I trust that you will all be there on time.

The committee adjourned at 1556.

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Mercredi 8 mars 2000

**Standing committee on
regulations and private bills**

Franchise Disclosure Act, 1999

**Comité permanent des
règlements et des projets
de loi privés**

Loi de 1999 sur la divulgation
relative aux franchises

Chair: Frances Lankin
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS

Wednesday 8 March 2000

The committee met at 0936 in the Delta Ottawa Hotel, Ottawa.

FRANCHISE DISCLOSURE ACT, 1999

LOI DE 1999 SUR LA DIVULGATION
RELATIVE AUX FRANCHISES

Consideration of Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors / Projet de loi 33, Loi obligeant les parties aux contrats de franchisage à agir équitablement, garantissant le droit d'association aux franchisés et imposant des obligations en matière de divulgation aux franchiseurs.

The Vice-Chair (Mr Garfield Dunlop): Good morning, everyone. Welcome to Ottawa.

I have a couple of quick announcements.

For committee members, on this piece of technology on our desks, turn to channel 1 if you want the English translation and channel 2 for the French translation. I want to point out that we will be recessing for the lunch break at 11:40, and that will give you about 20 minutes to check out of your rooms if you haven't already. There is a 12 o'clock deadline here.

This agenda differs somewhat. We have moved a couple of people around. So committee members have a different agenda than some people in the audience may have.

GILLIAN HADFIELD

The Vice-Chair: I'd like to start the meeting with Dr Gillian Hadfield. We have until 10:20 for your presentation, Dr Hadfield, and that includes any questions the committee may have. If you want to take the full time for your presentation, there will be no time for questions. If you give us a few minutes, we can have an opportunity to ask you a few questions. The floor is yours.

Dr Gillian Hadfield: Thank you very much. I'm going to try to keep it as brief as possible so we do have lots of time for questions. I have prepared some overhead slides, which Les Stewart is going to help me with, so that we can get through this.

I'm delighted for this opportunity to address the committee, and commend the committee for its attention to this issue. I started studying franchising 15 years ago, and

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

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ET DES PROJETS DE LOI PRIVÉS

Mercredi 8 mars 2000

often find it's a good way to bring a halt to a conversation to say that I'm interested in franchising, because it doesn't sound like something terribly exciting to study. But it's actually quite a complex, interesting and very important relationship in our economy.

I'm here today to talk to you as an economist. I am on the faculty of law at the University of Toronto. I'm currently on leave, on sabbatical at Stanford University, but my permanent position is with the University of Toronto. I have a law degree and a PhD in economics. I'll tell you a bit about my background in just a moment.

I am the current president of the Canadian Law and Economics Association and former director of the American Law and Economics Association. I am a Canadian. I did my bachelor of arts in economics at Queen's University, where I was awarded the medal in economics. As I said, I went to Stanford for my PhD and my law degree. My PhD was in economics. My thesis topic is predictably long and obscure, but I thought I'd mention it to you, so you can see how franchising connects to the broadest set of interests I have continued to work on to the present time. The title was "Long-term Relationships and Commitment and the Design of Long-term Relationships, Applications and Limitations of Contracting."

My interests generally are: What does it take to make a long-term economic relationship a valuable one, what is the role of contracting, and where are the points at which contracting needs additional support from legal rules? I have written a number of articles on franchising, some of which have "franchising" in the title and some of which do not, because I view franchising as an example of a more general set of issues related to overcoming problems of commitment and productivity in long-term relationships.

I teach contracts at the University of Toronto, and teach an advanced contracts class in which franchising is a dominant part. I have continued to work on related issues, as they arise, in design of legal institutions and consumer protection. Enough about me. Let's talk about franchising.

My plan for this presentation is to speak to you as an economist and to try to bring out what, in my work, I have identified as the important things to pay attention to about franchising. There are fairly simple things you can know about franchising that give a lot of guidance to thinking through the problem of what you do about franchising. Do you leave it alone completely, or is there any role for legislation?

Franchising, as you may already have discovered, is a term that has a lot of different meanings. The type of franchising most of us are interested in, and are focusing on here, could more specifically be called “business format franchising.” That is a type of franchising where a franchisor is selling a small business package to somebody who wants to operate a small business. Franchisees are individuals who are buyers of that package. They can be characterized as people who respond to an advertising pitch. Franchisees, in fact, will go out and identify themselves as: “I’m interested in buying a franchise. What are my options? What are my possibilities?” They respond to the pitch: “Own your own business. Follow our rules and you’ll succeed.” It’s very important to keep in mind that that’s who franchisees are and that is the nature of how this relationship gets started. There’s nothing wrong with that; that’s what is being sold.

I want to emphasize that the industry is franchising and not hamburgers. Franchising is sometimes described as a method of distribution, but it’s not. It does distribute products, but it’s an industry in and of itself, where the product is the small business package for somebody who wants to operate their business. In order to be successful a franchisor has to figure out that if they haven’t established internally the structures for serving franchisees and providing them with the kinds of support they need to be successful, they’re not going to survive as franchisees. This hard lesson was learned, for example, by the founder of Domino’s. When Domino’s Pizza decided to go into franchising, they failed quite dramatically because they hadn’t realized they were no longer selling pizzas but were now selling franchises. That’s one of the things you look for in identifying a sophisticated franchisor. They have figured that out.

To give you a sense of this as an industry, I went on to the Web site www.franchising.com, which is a Web site to which anyone could go who is looking to buy a franchise or looking to advertise a franchise. It’s billed as a worldwide directory of franchising. You can enter, “I’d like to know by country or I’d like to know by investment level what my options are,” and it will spit those out. I just pulled out a fraction of the “H’s” to give you some sense of this as a market for franchises and also to give you a sense of the wide range of areas in which franchising occurs.

Franchising is not just McDonald’s and Domino’s and Hampton Inns, but is also Hair Club for Men, Hakky Instant Shoe Repair, Hammerle—I don’t even know what that is—H2O Plus, a lot of different areas. It’s now a very large fraction of the retail market. People who are going into franchising look for something they might be interested in doing, but they are not coming to it and saying, “Look, I’m an experienced motel operator, and I’d like to operate one of your motels.” They’re looking for an investment opportunity, they’re looking to be their own boss and they’re looking for a good package.

If you look at this Web site, some of them have more specific information. For example, Häagen-Dazs, in their pitch to prospective franchisees, provides information

about how long they have been franchising, ie, giving some indication of how sophisticated they are and whether they know what franchising involves in terms of supporting franchisees; what the investment levels are; how many units they have; how many company-owned units they have, which is important information for a franchisee to know both in terms of what ground-level information does the company have, but also, are they coming in and buying up the franchisees. Häagen-Dazs here is showing they’ve been this since 1974 and their number of company-owned units is two. That indicates there is probably not a situation where they’re buying up their franchisees who are successful, which is something that happens in some systems.

The franchise relationship has a very distinctive structure, and if you can get a handle on this structure, it’s an excellent key to figuring out how to think about what we do with franchising in terms of legislation. Franchising is characterized by a separation of ownership and control over the assets in the business. Franchisees own the assets; the franchisors control them. That is something we see in lots of places in the economy. We see that in securities markets. We see that in corporations. Shareholders own the assets, own the company; managers and directors control those assets. That separation of ownership and control is something, in all of these settings, that is a source of great value. I may have the assets, own them, but not be the best person or organization to determine what to do with them. So you give your money to a stockbroker and ask them to invest it on your behalf, or the fund manager. Invest in a company and have the managers make the business decisions and the corporation purchase the assets of a franchise and have a franchisor determine what is the best way to deploy those assets. That is a source of value and that’s why franchising is valuable.

That separation of ownership and control, however, also creates vulnerability. The fact that somebody else is controlling your assets means that you’ve got to be a little bit worried about whether they’re going to be putting them to the best use for you, or whether they’re going to be taking advantage of them.

The types of risks that you face up front when you separate out ownership and control—and we can see this in franchising as well—is a problem of misrepresentation, misrepresentation as to what the individual or organization that has control over the assets is going to do with them. Some of them are fairly standard things: fraud, misleading advertising or where you’re paying for nothing. This is not something that is special to the franchise industry. This is something that arises throughout the economy in lots of different places. Telemarketing is another example where we can see that, and the fly-by-night stocks are another example, where you invest in a company that actually doesn’t have the capitalization that it may represent. You can be defrauded by scam operations. I want to draw that comparison.

The previous slide was about risks at the outset of a franchise relationship. The risks I want to emphasize in

franchising have to do with ongoing risks. Ongoing risks arise because of something that economists have labelled opportunism. Opportunism is formally the extracting of the value of the sunk investment that somebody has made in a relationship, taking advantage of the fact that someone is locked in to a certain extent. I'm going to give you an example of it in just a minute to make it quite clear, because this is the source of the vulnerability, the way in which the vulnerability in franchising arises.

It's hard sometimes for people to understand how it could be that franchisors would ever take advantage of franchisees, because it appears at first glance that they must have the same interests: everybody wants this business to succeed. To some extent that's true, but there are ways in which their interests diverge.

0950

One of the most important ones is in terms of where their returns from the franchise are coming from. Franchisees at the end of the day are collecting the profits from the franchise. They've got their revenues, they take off all their costs, they take off their royalties to the franchisor, and what's left over are their profits. Franchisors collect their money from a franchise from an upfront franchise fee, if there is one, and generally from royalties. Royalties are collected on the basis of revenues before any costs are taken off. So if all those revenues are there, the franchisee is paying attention to the level of costs because he wants to know what's left over at the end of the day. But his costs are not of the same concern to the franchisor unless they're impinging on revenues or the ability to sell other franchises. So there's a way in which their interests can diverge. A franchisor can be interested in generating volume and not too concerned about costs; franchisees are concerned about what is left over at the end of the day.

Because of the separation of ownership and control, franchisors are making outlet decisions when they're deciding where to open up other outlets, whether to go ahead with the renovation of an outlet or a change in a marketing approach, whether or not to introduce new menu items or put on a promotional plan. All the decisions that the franchisor is making, which, remember, are the reasons that a franchise is valuable—it is not a bad thing that franchisors are making decisions about how to run this outlet. This is precisely why people want to be franchisees, because they want franchisors making those decisions and not themselves. But they're making those decisions with the franchisees' money. So the question is, to what extent are they taking into account, when they're making those decisions, that it's not their money at risk but the franchisees' money at risk?

This risk is not something special or unusual in terms of franchising. I go back to the analogy to the securities market or a corporation. We know that in our corporate law, if we have investors handing their money over to the managers of corporations, there's a risk of self-dealing; that is to say, the managers directing the assets of a company to ventures or suppliers that are owned or controlled by the managers and making profits from the

fact that they're in the position of management. We know there's a risk of insider trading, taking advantage of the fact that they have the information before the investors, the owners, have it and trading on it. We know that we can't have a productive, vibrant economy with a productive, vibrant securities market or corporate structure without protections against self-dealing and insider trading, and that's what we do have in those areas. The things I'm talking about in franchising are just exactly the same.

I wanted to give you a specific example of what I mean by opportunism, just to make it a little bit more graphic for you. Suppose you had a \$100,000 investment in a franchise, and within a year that franchise generated \$200,000 in revenue. Remember, that's where the franchisor's royalties come from, off that \$200,000. Just suppose the costs of operating the franchise outlet were \$120,000 and that the franchisee paid himself a salary of \$50,000, which I just want you to assume. I'm an economist; we're making a lot of assumptions here. That \$50,000 is what that franchisee was making and could make if they gave up the franchise and went back into whatever their employment was before they became a franchisee.

Those numbers—\$200,000 minus \$120,000 minus \$50,000—gosh, I think I added wrong. We have a return of \$30,000. Sorry. This is actually good. You know people are paying attention.

To correct the record—I'm a theorist; I was never any good at the numbers—the return on the investment is \$30,000. That's an even better return on the investment than I was anticipating here in this franchise. That looks pretty good, right? You put your \$100,000 down, you make the same salary you made in the non-franchise setting and you're making a \$30,000 return—I'm just assuming this is in one year—on that \$100,000 investment. This is not a representation of what is going to happen to you if you open a franchise, by the way.

So there's that \$30,000 sitting there. Suppose the franchisor comes in in the second year and says: "You know what, we've decided we need to overhaul the outlet. We've just discovered that the aisles are too narrow and we need a different marketing approach. We need to make certain kinds of changes." The franchisor can increase the cost of operating that outlet by as much as \$30,000 a year before you're going to say, "You know what, I'm out of here, I'm done."

Here's what I mean. That could be through legitimate decisions about needing to change the outlet because that's what we need to do to maintain competitiveness. It could be that if we don't pay that \$30,000, next year those revenues are not going to be \$200,000; they're going to be \$100,000 or lower. But it could also be that that money is sitting there and the franchisor has opportunities to extract that value: They could raise royalties, they could make investments they would not make themselves if those were their own assets at risk. So the point here is the notion of opportunism and the vulnerability of that \$30,000 sitting there. The franchisee is going to stay in business even if that is gone. If that \$30,000 is pulled

out by the franchisor, the franchisee now faces these two choices: "I can stay in the business, I've made my \$100,000 investment, but if that's a sunk cost, if that is gone, I can't recoup that. I get \$50,000 a year in salary if I stay, I get \$50,000 a year in salary if I leave. I've lost my \$30,000 return on my \$100,000 investment but there's nothing I can do about that." That's what makes a franchisee vulnerable.

You can look at that risk of opportunism and you can think a lot of things about it, like it's unfair and shouldn't be allowed, it's outrageous, whatever you want to think in terms of that risk. I'm going to focus on why we should be concerned about it, what is the public interest in doing something about the risk of opportunism, which I should say is a standard risk in many long-term relationships. The reason we have contract law is to deal with the problem of opportunism.

I want to talk a bit about what the efficiency considerations are with respect to doing something about opportunism and those risks. Franchising is what modern retailing looks like. From varying statistics, I think it's about 45% of the retail market in Canada and it has the potential to become even more so. The reason that franchising is the way of the future, the way it has been for some time now as well, is because franchising takes the value you get from having a large-scale operation, the returns to scale of bulk buying, of collecting information, of being able to manage inventories, of large-scale advertising, it takes all of those benefits that are available to a large-scale operation and parcels them out to small-scale operations. That's also why you want to be in a franchise, because the franchisor can do the marketing studies and do the research and analyze the data and come up with the fancy advertising campaigns that a single operator can't. This is going to be especially true in our brave new world of the digital age where information has become terribly important in retail in particular.

The reason we have the large, big-box stores is because the large stores can aggregate massive amounts of information they collect from those UPC codes that are flashing through the checkout machine. They're keeping track of the inventories, they're keeping track of how demand is shifting on a daily basis and they're moving product around in ways that dramatically reduce costs and respond much more quickly than has ever been true in the past to shifts in demand.

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That's a value that comes with large scale, and that's where franchising comes in. That benefit of large scale, aggregating all that information, can then be parcelled out to small operators who can't compete otherwise. The days in which you could open up the local store and not have access to that information and not be able to respond in the same ways are very, very quickly disappearing. That's also true, of course, with Internet sales.

The risks that franchisees face, the risks I enumerated earlier, the risk of misrepresentation and the risk of opportunism, are costly for the economy. When fran-

chisees end up getting into a franchise that doesn't deliver on its promises and invests those funds, and those funds then disappear, that's wasted investment funds in the economy. That's not a good thing. That's one of the reasons we don't want that in the stock market. We don't want people taking their investments and putting them into fly-by-night stocks. We'd rather have those investments in legitimate businesses and operations that are going to be around. We want people to be able to make wise investment decisions. This is really emphasized by one study. Francine La Fontaine, another Canadian, although she's at a US university now, demonstrated there was a 77% failure rate for franchisors over a five-year period in the United States; that is to say 77% of the franchise operations systems that came into existence disappeared within five years. Now, of course that means the franchisees' investments went with them.

The risks of franchising are also costly because even though it's at 45% of the economy now, we may be looking at too little franchising in the economy. If franchising is risky and potential franchisees understand those risks, they understand the risks of misrepresentation, but more importantly they understand the risk of opportunism, that they're going to be vulnerable, that \$30,000 is going to be vulnerable, they can be kind of over the barrel—"Well, what can I say? I can't walk away from this thing even if that amount is being extracted by decisions the franchisor is making"—then some people are going to decide not to become franchisees, not to get into this relationship. That can mean, from the point of view of the economy, we don't have enough of it going on. By "enough," the technical way of thinking about it would be, we don't have the efficient scale. The volume of franchising can be too low because we don't have enough people going into it because they don't get enough protection against the risks and they know they can't protect themselves through their contracts.

It may also be that we're not getting the right mix of people in franchising, we're not getting the best potential franchisees, which is to say we're getting people who have few opportunities on the outside but not the people who have better opportunities on the outside who nonetheless may be the most productive people as franchisees. And, in fact, you hear franchisors speak frequently about the difficulty that they feel they face in identifying good franchisees.

One of the things I talk quite a bit about in my work in a lot of different areas is—and this is one of the main lessons of this combined field of law and economics that I'm in—it's frequently the case that people see law and free markets as being opposed to one another, that introducing law into markets disturbs free markets. It's important to really focus on the fact that free markets require a legal structure. This is the mistake that has caused a lot of problems in eastern Europe and Russia, to sort of say, "OK, let's open up to free markets," but there wasn't the legal structure in place to support those free markets and they haven't taken off.

You need legal structure to support free markets. You need contract law, you need property law, and as I've been drawing the analogy, with securities, regulation and corporate law. In securities you need a way of protecting owners and investors from the abuse of their funds by managers and brokers through their control. By doing that, that's what makes that free market start to work. The New York Stock Exchange promulgates a thick book of rules and regulations privately, overseen by the securities commission, but privately generates those rules because they know that those rules are what will attract investment and that's how you get the efficient scale.

Corporate law establishes that there are fiduciary duties on the part of managers and directors so that when managers and directors are handling those funds of the stockholders, they're under an obligation to manage those funds in the interests of the stockholders. That's law that generates and supports an efficient market. In the sort of comparative work these days, one of the reasons it is thought that the US and North American markets are doing so well is because the securities regulation and corporate law have developed in much better paths than in Europe, for example, and it's the legal structures that are supporting the growth in these areas in North America.

I've mentioned the types of risk that are out there in franchising, emphasizing the opportunism problem. There are a variety of places in which you can come in and regulate, structure the market, the various types of things you can do to support these relationships. One is basic contract law. Obviously, you need basic contract law. The second one is disclosure law, like we have in Bill 33, which I think is an essential and very important component of that proposal. This is also what you see in the Federal Trade Commission rules in the United States—that's federal law—in California and in Alberta. California disclosure law has been there since 1971. You can then move on to registration law, where you require franchisors to register with an agency of the government. That has been true in California since 1971 as well, and is an aspect of Tony Martin's Bill 35.

You can then take another step down, or up, and introduce substantive relationship law, by which I mean rules and regulations about behaviour within this relationship once it has started so we can deal with the misrepresentation problem at the outset through disclosure law. Registration law also addresses that kind of problem.

But then we've got this relationship that's now supposed to last for 15 or 20 years. What do we do about the opportunism problem? That's where we start looking at substantive relationship law. That's where you start looking at putting in provisions that govern or can impinge on termination and non-renewal decisions, such as requiring that there be termination or non-renewal only for good cause. That's where you can find legal provisions requiring that there be notice of a potential default under the franchise agreement and an opportunity for the franchisee to cure that default. This is where you

find phrases or obligations set in terms such as "good faith and fair dealing."

Substantive relationship law has been around in the US in the auto and petroleum marketing area since 1956. The Automobile Dealers Day in Court Act was 1956 in the US. In California it has been around since 1981. Again, it is an aspect of Tony Martin's bill, which actually contains a lot of the best features of what you can find in North America in terms of thinking about how to handle franchising.

Good faith and fair dealing terms are in all US contracts. It's an implied term in any contract in the United States, in any industry, no matter where you are. There's an implied duty of good faith and fair dealing. So it's nothing special. You don't need it in a piece of legislation; it's always there. In fact, when I started doing research on franchising back in 1986 or 1987, what I was doing at the time was reading thousands of franchising cases and looking at how the term "good faith and fair dealing" was being interpreted in those settings, and to what extent was it addressing the problems of opportunism, to what extent did the courts understand what was happening in a franchise relationship, and therefore what "good faith and fair dealing" might mean in that context.

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The Vice-Chair: You have about 10 or 11 minutes left.

Dr Hadfield: Yes, OK. You have the modes of enforcement in the handout there, so I'm just going to move on to the next one so that I can talk specifically about what I think is necessary here.

Interjection.

Dr Hadfield: There should be one that says, "What's necessary?" It's missing from the pile. That's too bad. This is the one I think is most important.

There are different ways in which you can achieve the goal of getting the kind of commitment you need in franchising. One of them is through reputation, and for a lot of people who feel that there's not a need for any kind of regulation here that's what there's an appeal to: "We don't need to worry about franchising because franchisors won't treat their franchisees badly because it's bad for business to treat their franchisees badly." To some extent, that's true. What that requires is that the information about what franchisors are doing to franchisees has to be free-flowing, available and low-cost.

When I put on my last slide here, which you can look at in the handout, there are two main things I think it would be a good idea to focus on in terms of what might be added to Bill 33 to better achieve the goal of supporting franchising as an economic activity. This isn't exhaustive. These are just the two I've chosen to focus on here that I think are most important.

One is this term of "good faith and fair dealing," a substantive obligation as to how the franchisor can exercise discretion. You can call it whatever you want. Currently, we have the term "fair dealing" in Bill 33. You can call it "good faith and fair dealing." You can

call it “commercial reasonableness,” as has been suggested by some other people who testified before you.

What’s important here is not what you call it but what you understand it to mean and what eventually courts or other enforcers understand it to mean, including what franchisors understand it to mean. What I’m going to suggest to you is that what it needs to be understood to mean is that franchisors are explicitly obligated to exercise their discretion as if it were their own assets at risk. Because if they’re not, that means they’re taking advantage of the fact that there is a separation of ownership and control and making a decision that, if they were the ones who had to renovate the outlet, would not be a good business decision. Sometimes it will be, but how do you decide if it’s a good business decision or if it’s advantage-taking? You ask, “Would the franchisor have done it with their own outlet?”

The second thing I think you need to focus on is low-cost enforcement because all the legal rules in the world are not going to make a difference unless there’s an ability to make use of those. I’ve suggested a few ways here in which you can achieve low-cost enforcement. One is to give associations a class standing in civil litigation. That’s a feature of Tony Martin’s bill which I think is important to look at in terms of making it possible to hold the franchisors to that obligation. Again, why do you want to hold the franchisors to the obligation? Because that’s how you generate efficient volume of franchising. That’s how you get people in franchising.

Another way of getting some low-cost enforcement, and take the emphasis off “enforcement” there, is to put in place dispute resolutions that are low-cost, like mediation, non-adversarial approaches, to say, “Wait a second. I don’t really understand why you’re asking me to renovate like this,” or “This is high-cost,” or “Maybe you don’t understand how this is going to impact on the outlet.”

Third, and I want to emphasize this one in particular, government can do something important in supporting the private mechanisms that are out there to give franchisees the kind of commitment from franchisors that they need, and that franchisors want as a whole in order to generate interest in franchising. They can support the reputation mechanisms and can do that by supporting the flows of information, by allowing information to flow. It’s important for the stories about what franchisors have done and what franchisees have experienced to be out there and available at low cost to potential franchisees, so that they can make judgments about what to do, because that’s what provides the check on franchisor behaviour that will in the end probably be most effective. That’s really what makes the reputation mechanism that says, “Look, a franchisor’s not going to cheat their franchisees because they won’t be able to sell franchises.” For that to work, that information has to be flowing. That’s what you want franchisors to be doing, is paying attention to that.

For example, I think there should be a real push for the government to make sure that information is flowing, that

it’s not made confidential by confidentiality agreements, that franchisees are protected against lawsuits in the event they talk about what’s happened to them as franchisees.

I’m not going to go into detail because of the time, but there are ways in which the government could play a role in structuring these mechanisms; for example, by mandating participation in an Internet Web site that publicizes information about the experience of franchisees with particular franchisors, that prospective franchisees could then access in order to assess, just as they’re assessing investment levels and how you’ve been in this, so that the information is there. At the end of the day, I think that’s one of the most effective things we can do. Thank you.

The Vice-Chair: Thank you very much, Dr Hadfield. We’ve got about five minutes for questions here. First of all, the Liberal caucus.

Mr Richard Patten (Ottawa Centre): First of all, welcome to Ottawa Centre. I gather you’ve had a good trip flying down from Sault Ste Marie. I guess you’re ready to—

Mr Tony Martin (Sault Ste Marie): Another fine city.

Mr Patten: Another fine city.

Thank you for that presentation. I thought that was excellent. I’d like to come back to one thing you mentioned, and that was that one of your colleagues pointed out the 77% failure rate for US franchisors. (1) I wonder if you have any more recent information on what the situation is in the Canadian context and (2) could you elaborate on your comment that perhaps there’s “too little franchising” in Canada?

Dr Hadfield: I don’t think there’s more recent information in Canada. This is not an industry that’s been studied very extensively at all in Canada, so that data has just not been collected.

In terms of there being too little franchising, the only way we could know what the amount of franchising could be is to say, “Theoretically, have we made this as attractive as it could be?” We know that in any industry, in any economic relationship, if there’s a risk of opportunism, of being taken advantage of, then one of the things that’s going to happen is fewer people will go into it. Saying that there could be too little franchising is to say that to the extent that there are unaddressed problems of opportunism and it’s risky, people will stay out of it.

Anecdotally, you can know that because, for example, I would say that I wouldn’t go into it because the risks are there. It wouldn’t be that I would worry that I was getting in with a fly-by-night operator. I just know there’s no protection against the exercise of that control power in those ways. It’s just not there, and you can’t write it into the contract. It’s not going to work to write it into the contract. So that’s where the prediction comes from.

Mr Martin: We do have a couple of articles written by Professor Hadfield that we’ll make available to the committee and to the people who are here today. One is

Problematic Relations: Franchising and the Law of Incomplete Contracts; the other is *The Price of Law: How the Market for Lawyers Distorts the Justice System*. There are a couple of pieces of research that I've had done—Richard, I've been handing this stuff out as we've gone along—by Susan in legislative research. It's a summary of an article on franchise contract terms, like what it says and what it doesn't say, and another article that was put together by the American Franchisee Association, *Avoiding the Traps—Boilerplate that Bites: The 10 Most Dangerous Contract Terms*. I'll be handing those out in a few minutes.

I wanted to ask Professor Hadfield to maybe expand a little bit on the issue of mediation and dispute resolution mechanisms. There's been the suggestion that what's already in place in Ontario that forces people into mediation before they go to the courts would catch this and deal with it. What's your view on that?

Dr Hadfield: The problem with mandatory mediation as it's now structured—and this is happening throughout; there's nothing special about franchising here—is that it is done in the context of lawsuits that have already been filed and an adversarial structure that's already been put in place. You've hired lawyers. You've filed a complaint or made an application; you've had an answer. So the positions have generally been hardened at that point, and most franchisees are probably not taking that step until things have gotten to an extreme point, like they've been terminated.

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The idea of a low-cost form of resolution that supports this relationship would be a mediation mechanism that would kick in at a point at which the relationship can still be saved, at which we can deal with problems at an early stage so that the mediation would be low-cost and would not involve lawyers and legal suits. It might involve calling up, for example, the mediation arm of a private organization and saying, "I've just received this letter that says I have to make these changes to my outlet or the royalty rate is going up 2% next year, and I don't like this," doing nothing ahead of time other than getting that information out and then having a structured way in which you can talk with the other side.

As a way of comparison in a very different setting, in family law, the less legal structure that you have up front, the more likely it is that the mediation is going to be effective, because the positions haven't been hardened. You want to keep this out of that adversarial approach, really, to think about doing something quite different, very problem-solving oriented rather than litigation oriented, which is the way mandatory mediation is structured right now.

The Vice-Chair: We have a quick question by Mr O'Toole.

Mr John O'Toole (Durham): Thank you very much for your expert presentation. We've heard from a couple of people slightly different interpretations of some of this stuff. I think we all understand that there are sort of dominant-subordinate roles with the franchisor and the

franchisee. Some have clearly described it as, "One takes the money out of the top and the other takes the money out of the bottom, if there is any." It's an unusual, rather risky position to be in.

I'm more interested in having you explain the way we've described fair dealing. That is something I'm interested in. I'm surprised that you would say that it's implied, so why put it in there? In most contracts, people would want to be going in with unencumbered integrity, so there's an implied element to it. The presenters on previous days asked us to strengthen it. One of them suggested putting "commercial reasonableness" in its place and said it's very much defined in case law. It's not a case that it's ambiguous or untested in court. You've said quite the opposite. You say that not only is it not necessary—it's implied—but it's no stronger than "commercial reasonableness."

I'm not in a position academically to question you, but I want that clarified. If we moved at all to improve it, I would suspect that might be one thing, to clarify fair dealing and not end up with a whole book of regulations of what fair dealing is and wait for the courts to define it. They said "commercial reasonableness" has gone through the discipline of being defined in property matters and other issues.

Just one other thing, and this isn't related to what I've just said. The right to associate—

The Vice-Chair: Where has that one-minute question gone?

Mr O'Toole: She's an expert. We've got to hear from them more importantly than the others, perhaps.

If you looked at the Internet and you had these associations—and just think of what's actually going on today at the academic level. You can get your PhD online. Do you understand? It's emerging as one way of chatting around the world about McDonald's. You don't have to be too brilliant to figure out that whole exposure will be part of the right to associate. They'll say: "This is my horror story," and "This is my success story." You figure it out. I would think that would be automatic and implied. The right to associate would imply the technology association as well. But I think more important is the commercial reasonableness question.

Dr Hadfield: Let me clarify what I meant when I said it's implied. In the United States, it's part of contract law that it's implied. That is not part of Canadian contract law, so it is not implied in Canada. I don't mean to say that it would not be a good move, if that's where you're going. To strengthen the language to put in commercial reasonableness would be better than just saying "fair dealing." These are terms that have some legal meaning.

My point was to say that if what you're hoping to accomplish by putting language like that in there and then potentially strengthening that language—if your goal is to deal with this problem of opportunism, because that is what is costly, that's the risk that we need to address in franchising—then "commercial reasonableness," all of these terms, when they get interpreted by the courts—I remember what I did when I did this work 15

years ago. I would go and look at, what does "good faith" mean in the franchising context? Even if you've seen it in other areas, it ends up having an industry-specific meaning.

In the US cases, for example, what "good faith" and "fair dealing" came to mean was that the franchisor could exercise business judgment. That is to say, the franchisor could make the decisions without taking into account the impact on the franchisee, and the reason for that was the courts did not understand the nature of this relationship. They saw it like an employment relationship. They said: "Look, the franchisor is the one in charge. They're the company. They're the one that makes the decision about whether to change the number of lines of automobiles in this dealership or whether or not to discontinue this branch of the business." They were missing the opportunism problem. They were missing the essential feature of the franchising relationship.

My concern would be that you could strengthen the language, certainly, from "fair dealing" to "good faith" to "commercial reasonableness," but what's going to happen in the courts is the term of "commercial reasonableness" will be defined in the franchising industry, in the franchising context. That is not currently there in the law; there isn't an established meaning for that. My suggestion to you is that the best thing to do to deal with this problem would be to make explicit what that means in this setting, and what it means in this setting is the franchisor should be making decisions with respect to those assets as if they were their own; that is, to take into account—you can fill in that, whatever language seems to work from that point of view.

To be clear, I would say, yes, "commercially reasonable" would be a better term, would give the courts a little bit more to work with in accomplishing this. But again, if you don't want to just leave it up to the courts and then 10 or 20 years from now say, "What have they done with that term?"—they could take that term and it could end up being exactly the same as it is now, with that problem having not been addressed.

The Vice-Chair: Thank you very much, Dr Hadfield. It's a pleasure to have you here with us this morning.

ALEX KONIGSBERG

The Vice-Chair: We will now go on to our next witness, Mr Alex Konigsberg. I'm trying to stick to a 20-minute schedule, Mr Konigsberg, for presentation and questions. You may start whenever you want.

Mr Alex Konigsberg: My name is Alex Konigsberg. I'm an attorney practising in Montreal. I've asked that my CV be distributed to you, not to tell you how brilliant I am but to tell you that I probably have more experience in dealing with franchise legislation throughout the world than probably any other person. I have been consulted by most governments dealing with legislation. I have been consulted by most franchise associations dealing with legislation. I have been the only non-American to be invited to appear before the Congress of the United States

on their franchise legislation. I think I've been the only non-American to be invited to appear before the Federal Trade Commission on the FTC franchise rule. I have been invited to go to Australia to meet with industry and to meet with government, to Mexico. Frankly, I think I've been invited by nearly every country of the world that deals with franchise legislation, other than the province of Ontario.

I would also like to talk at length, but later on in my conversation, about the efforts that are being undertaken by Unidroit, which is an organization in Rome in which Canada, as a country, is a very prominent member. I think it would be very important that this group understand what is going on in Unidroit as it pertains to franchise legislation.

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Although I've spent most of my life representing franchisors, I'm not here to speak on behalf of franchisors, I'm not here to speak on behalf of the franchise associations; I'm here to speak on behalf of franchising. I also want to underline the fact that I've appeared as an expert witness in Ontario courts on behalf of franchisees in the leading litigation cases that have come about in the last number of years before the courts of Ontario. I underline the words "I've appeared on behalf of franchisees" in these litigation cases.

I would also like to say to you categorically, because I've studied this at length for 35 years, that there's absolutely no correlation of any nature whatsoever between the existence of franchise legislation in a particular country and the number of bankruptcies or the amount of fraudulent activities on behalf of franchisors. Frankly, the country that has more lousy franchise practices, that has more bankruptcies, that has more fraudulent activities, is the United States of America, which is by far and above the most regulated country, when it comes to franchising, in the world. There is no reason whatsoever to conclude, based on the experience of any country that has adapted franchise legislation, specifically, that the enactment of such legislation will result in less fraudulent practices or better franchise practices. There is absolutely no correlation.

There's a tremendous amount of misinformation that is spread. I came in a few minutes early and I listened to the learned professor and, frankly, she and I are in different worlds. My experiences are totally different, and on many issues I would challenge some of the statements that were made if I'm given the opportunity. They're just not the case.

Notwithstanding that, I am a proponent of disclosure legislation. I believe that we should have disclosure legislation. I would also caution that the disclosure must be meaningful because, if it's not meaningful, it's a waste of time. It must serve to make the relationship between the franchisor and the franchisee more transparent and it must be simple. If it's not simple, no one is going to read it. That's one of the problems with the Australian legislation. The franchisor is literally required to repeat every provision of the franchise agreement and then explain it. You end up with a document the franchisees do not read.

I would like to mention one issue, because I am here to plead on behalf of franchising and to plead on behalf of a better community of franchising. There is one issue that I think a disclosure document should deal with, and deal with at length, apart from the obvious, apart from the reputation of the franchisor, apart from his experience, apart from the litigation, apart from any of the classical things that, frankly, are contained in Bill 33. But there is one particular issue that impacts on the franchise relationship that is causing a lot of problems to franchisees, and that deals with the supply of goods and services by the franchisor to the franchisee. This is the lightning rod. To the extent that there are a lot of problems going on within this industry, I would venture to say that most of these problems trace back to this particular issue.

I would strongly urge this committee that, in their regulations dealing with disclosure, this issue be dealt with up front. What is the policy of the franchisor vis-à-vis prices or products or services if he or a related corporation is the supplier of the product and service? If they're designated suppliers, what is the policy? If the franchisor is allowed to charge for goods and services, if he has no policy, then let him disclose that he has no policy. Let the franchisee beware that there is no policy, that the franchisor is free to charge what he wants. If it's cost plus 10%, then what is the definition of cost? If it is the retail selling price less a certain percentage, what is that? If it's a designated supplier, does the franchisor take commissions? Does he take volume rebates?

I am not suggesting that the amount of these volume rebates be disclosed. I don't think it's important that it be disclosed. It's the principle that must be disclosed. This is the one area that I would suggest, because to me this is the lightning rod of problems the franchise industry is facing: If things are disclosed up front in the disclosure document, then the franchisee has a very fair idea of what he's involved in.

I would very strongly urge this Legislature not to get involved in relationship issues. The United States of America, including California, has relationship issues, and all that they have is more litigation and more litigation and more litigation. I challenge anyone to bring forth any type of information that there are fewer fraudulent practices, few bankruptcies and fewer bad franchisors in the state of California than anywhere else.

I am concerned with the amount of misinformation that is being put before this group. Someone sent me an e-mail recently in which they talked about Iowa. They asked that empirical evidence be given as to what is happening in the state of Iowa. There's a bill presently pending before the state of Iowa to repeal much of their legislation. All that it has done is hurt franchising.

Most countries of the world today that have adopted legislation, whether it be Mexico, Brazil, Spain or France, have adopted disclosure legislation. They have not adopted relationship legislation. The one glaring exception is Australia, and Australia is paying the price. There has been a study that recently came out in

Australia, pointing out that since the adoption of their law, this has damaged franchising severely.

Frankly, I don't believe it. I don't think it has damaged franchising severely. But what it has done is increase the legal costs dramatically. You read the Australian legislation and you will see that they have relationship issues dealing with termination. It works for 90% of the franchise systems. It doesn't work for 10%. If you try to adopt relationship law you will solve nothing other than, to put it bluntly, to fatten the pocketbook of many lawyers practising in this field.

I have seen material go out that talks about Europe. The only countries in Europe that have legislation are Spain and France. The block exemption regulation on franchising which is issued by the European Community does not regulate franchising. It does not regulate disclosure. It does not regulate relationships. It deals with competition issues because of the particular intricacies of the Treaty of Rome.

There are problems facing this industry; there are very significant problems facing this industry. I have two suggestions, but before that I want to deal with one other statistic. I've heard a statistic thrown around—I hope I'm wrong—of a 70% failure rate of franchisees in the States. That was put on the table and has been debunked on numerous occasions. I've also heard that 80% of all franchisees are successful. That too is extremely misleading. It's a very misleading statistic even though it may be true. At one level, where you have serious, mature franchisors—McDonald's or Tim Hortons or whatever it may be—the failure rate is incredibly small; it may be 1%, it may be 2%. At the other level, with start-up franchisors, the failure rate may be 50% or 60%. To extrapolate from that the industry decision that 80% of all franchisees are successful is misleading too. It may be 95% for mature franchisors; it may be 50% for start-up franchisors. People have to be aware of this.

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There are two things—and I have given this a tremendous amount of thought over the years because it's something that has intrigued me. On the few occasions when I represent franchisees, they bring their agreement to me. I put it aside and say to them, "I will not agree to take you on as a client and I will not read your franchise agreement until you get into your car or get on a train or a plane and go and talk to other franchisees." One of the beauties of franchising is that the information is public. The best information possible that a prospective franchisee can get is to go and talk to other franchisees in the same system. They don't do it. They don't read their disclosure document, and most of the time they don't understand their disclosure document.

Every franchise association around the world puts out a publication, "Investigate Before Investing." There is no other industry, no other category of law where that information is out. I have yet to see one case anywhere in the world where a franchisee was prosecuted or sued because they had a conversation with a prospective franchisee. Franchisees are more than willing to talk.

They're more than willing to give the truth of whether the franchisor is good, whether he's competent, whether he's not competent, and anything can be done. Because just having a disclosure document, if nobody reads it, is not going to help the situation. I know the franchise associations have tried their best, but prospective franchisees do not do it. If they did, they would be able to sort out very quickly who are the good franchisors, who are the competent franchisors and who are the reasonable franchisors.

The second one is even more insidious. Most prospective franchisees, and most lawyers and most consultants, for some reason believe that if you buy a franchise from a start-up franchisor, somehow you are getting in on the bottom floor and are getting a better deal. The reality is the opposite. Most start-up franchisors charge a higher royalty than most mature franchisors. The fees are generally higher, and they just can't supply. They don't have the infrastructure, they don't have the training facilities, they don't have the advertising clout and they don't have the purchasing clout.

I'm generalizing. I'm aware of several start-up franchisors who have all those things, because they have made it their business to become serious franchisors. But many of them don't. If a person who is going to buy a franchise goes into the relationship understanding what is going on, there's no other industry like it where this information is available. It comes down to educating potential franchisees. You cannot legislate competence. There are a lot of incompetent franchisors, a lot of incompetent lawyers, a lot of incompetent doctors and a lot of incompetent business people. You cannot legislate it.

On the issue of good faith and fair dealing, it is now accepted by the jurisprudence in the United States that good faith and fair dealing cannot overrule the specific terms of any agreement. That has been litigated to death in the United States, but I think it is now accepted that good faith and fair dealing will not overrule the specific terms of an agreement.

On the issue that franchisors, in exercising their discretion, should treat the franchisee as if it was their business, that is an open invitation to unmitigated disaster. I am not suggesting to you that a franchisor shouldn't do what is good for his business. But if you understand the franchise relationship, the duty on the franchisor should be what is good for the franchise network. What may be good for a franchisee might be a disaster for the network. It is very important that you understand this distinction.

A franchise agreement is a one-sided agreement, and there's a reason for that. There are really three parties to a franchise agreement, not just the franchisor and franchisee. There's the entire network of franchisees, and somebody has to protect the integrity of the franchise system. It's either the franchisor or the franchisees, and I think even franchisees will tell you that they have to leave this to the franchisor. But in exercising his discretion, it should not be to protect a franchisee or to

protect himself. It should be for the protection of the entire franchise system.

I'd like to spend two minutes, if I may, on Unidroit.

The Vice-Chair: That's all you have left anyway.

Mr Konigsberg: Unidroit was an offshoot of the League of Nations, which was disbanded with the League of Nations. Then in the 1940s, by multilateral agreement, a number of countries put Unidroit back together. About 65 countries in the world are now members of Unidroit and have agreed to be bound by the terms of Unidroit. Unidroit stands for the International Institute for Unification of Private Law. What Unidroit has been charged with is harmonizing private law around the world. Unidroit, in the last number of years, has taken an extremely close look at franchising. About 18 months ago they appointed a four-member committee to prepare draft legislation on franchising. The committee met in Rome approximately one year ago and came up with a draft model law that deals with disclosure only. It does not deal with relationship issues. This was discussed ad nauseam by some of the finest practitioners, judges and professors, and after examining legislation from around the world, they came to the conclusion that disclosure legislation was something that would be supported by Unidroit.

The draft model law that has been put out by Unidroit was substantially based on Bill 33—Bill 33 of the province of Alberta, la loi Dubin in France, Australia. These countries were carefully analyzed and they have come up with a draft model law. It is not yet public. In the model law a decision was made after a great deal of discussion that good faith and fair dealing would not be dealt with because that deals with a relationship. If you were going to do a model disclosure law, it would be advisable not to deal with relationship issues. Australia has tried to define fair dealing by being negative, by talking about unconscionable conduct, and they've gone into a very long definition of what constitutes unconscionable conduct. Any lawyer could just pick it to pieces.

I repeat in my last few words: A lot of misinformation is being brought before this organization. I heartily support franchise legislation that is limited to disclosure. If it goes beyond, into relationship issues, all you will do is damage the franchise industry.

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Mr O'Toole: Mr Chair, on a point of order, if I could, for the members of the committee: You mentioned a model disclosure law. If you could file that with the committee that would be very helpful.

Mr Konigsberg: I'm sorry?

Mr O'Toole: You mentioned in your presentations that Unidroit has developed a draft model disclosure. If you could leave that with the committee, I would appreciate it.

Mr Konigsberg: Yes. It has not yet been made public. I will seek permission.

Mr O'Toole: Seek approval for that?

Mr Konigsberg: Yes.

Mr O'Toole: It would be helpful.

Mr Konigsberg: Yes, I have a copy actually of the original one that I worked on myself. That is available, but there have been many amendments made since then and that has not yet been finalized. I might add that Canada is a very active member and once the country approves it—for example, the United Nations convention on the sale of goods; Canada has approved that—that becomes a governing law. That takes precedence to any provincial legislation dealing with sale of goods internationally.

Mr Martin: On another point of order, Mr Chair, if I might: I just find it unfortunate that the obviously experienced and learned gentleman didn't leave a minute or two for some of us to challenge some of the statements that he's made and ask some questions about some of the aspersions—

Mr Konigsberg: Well, I very much appreciate it.

Mr Martin: —that he cast on some of the presenters who have come before us over the last few days. They came in good faith, told their stories, told their truth as they knew it. To be dismissed in such a curt way this morning is, in my view, very unfortunate.

The Vice-Chair: Thanks for your time this morning. I appreciate that very much.

TONY VANIKIOTIS

The Vice-Chair: Our next presenter will be from Country Style Donuts, Mr Tony Vanikiotis. We have 20 minutes for your presentation, and that includes any questions. So if you wish to have any questions, and the committee does like to ask a few, we'd like to have a few minutes there at the end at least after your presentation.

Mr Tony Vanikiotis: I sat down and put basically in letter form my presentation today so that I can touch on as many things as I can in as short a period of time as possible. Hopefully, there'll be time for a few questions afterwards. I'll read my letter to the committee.

Thank you for affording me the opportunity and privilege of addressing your committee with regard to my personal experiences as a previously licensed franchisee in the province of Ontario, and more specifically in Ottawa. The franchisor in question in my case was Country Style Donuts—I'll refer to them as CSD from now on—a division of Maple Leaf Mills.

Prior to expressing an interest in acquiring this franchise, I had been a nine-year restaurateur in Ottawa, having owned and operated a 140-seat licensed LLBO establishment in downtown Ottawa. I had been looking for a new challenge after a two-year hiatus from the food service industry and was quickly sold on the idea of a CSD franchise that was available in Ottawa on Prince of Wales Drive. It was known to CSD as store number 143.

After several meetings with CSD management, I was chosen as the successful applicant. I was led to believe that my application was selected from among a number of others and that CSD felt I was the right fit for this store. I later found out that I was the only applicant and

that the store had been on the market for some time since the previous franchisee had walked out.

The franchise was being marketed at \$225,000 as a resale store, which meant that it was being operated by CSD head office until it could be sold. We settled on a purchase price of \$140,000 with \$50,000 down and the balance financed, as arranged by CSD through the Bank of Montreal on my behalf. I passed the bank's financial requirements and secured a small business loan using my home and my personal guarantee as collateral. I also had a working capital fund of \$20,000, which was both a bank and a CSD requirement to complete the transaction.

Of course, there were all the fancy brochures and financial projections provided me by CSD based on sales figures that were obviously inflated and profit margins on sales that later proved to be not only unrealistic but also definitely unattainable. It was quite the sales pitch and I fell for it hook, line, and sinker.

Next came the prerequisite three-week training program at CSD commissary headquarters in Richmond Hill. There, it was drilled into us about CSD bulk buying power, and the virtues of CSD-authorized product and suppliers only in order to ensure the best possible price on the best possible product, thereby maintaining the integrity of the CSD chain and quality. I, like many others, bought into the CSD program almost like buying into a cult following. I was later to discover first-hand that the only integrity to be maintained was to be that of lining the CSD coffers at the expense of their franchisees, a practice which I am sure continues to this day.

When I got to my store and took control, profit margins were much lower than previously presented by CSD, and sales drastically lower than those shown to me for store 143. In less than three months, I had lost my \$20,000 reserve and found myself scrambling to find new working capital. My father loaned me \$20,000. By this time it was Christmas, which was a very slow period. By March, I knew I was in trouble again. The money my father had loaned me was now gone and I was at a loss as to what to do.

I asked CSD for assistance. Their solution: Run the store in the morning alone with one helper—my peak busy time—get rid of my weekend baker and do the bakes myself. In other words: "Instead of working 80 hours per week, work 96. In short, drop dead so we can take over the store and resell it yet again." That is when I looked to save some money by using my previous connections to local food suppliers and investigate some pricing on the same authorized product that was available locally.

These same products were available in Ottawa for between 15% and 30% less than what CSD was selling to us through their own out-of-town authorized suppliers through supposedly bulk buying power. What an eye-opener. Everything from Sunpac bottled juices to Dough Delight frozen croissants and bagels, to Chef Francisco frozen soups, to boxed Sultana raisins and walnuts. I think you get the picture.

I wrote a letter to Mr Gary MacDonald, the president of CSD, thinking he might want to know. Of course, he

already did know and wanted nothing to do with my complaint. From that point on I was branded. My store was frequently visited by operations managers who sought to eliminate these items from my fridges and freezers, at one point even threatening to put product not bought from CSD into the dumpster outside. It was the same authorized product bought cheaper from local suppliers. Simply put, CSD was not milking me any more.

In my 20 months as a CSD franchisee, we switched authorized suppliers three times and authorized product too many times to remember. Obviously, CSD got better deals from new suppliers. Whatever happened to the company line during training on consistency of product and price? Eventually, CSD also boxed and labelled their own line of products, so a claim could now be made that anything non-CSD labelled was a non-authorized product. We then no longer had the ability to shop for price with local suppliers. We in fact were now boxed in as franchisees as to where we could buy legal products.

But there is more. Country Style unilaterally decided to eliminate the small size coffee cups both for take-out and drink-in. That was fine except that we would now sell the medium for small pricing, large for medium, and a new extra large for large pricing. It was an effort, they said, to compete with market forces such as Tim Hortons. Only one slight problem: Our cost had now gone up by almost 30%, but of course there was no price break afforded us by CSD head office. In effect, our one money-maker was now profit reduced by the same 30%, and we were forced to buy new ceramic mugs at over \$12 each for the new in-house large. Our existing stock of both ceramic and paper cups and lids was now obsolete, and we had little or no notice other than an in-house memo delivered to us with our order from CSD warehouse.

By this time I had seen enough. A legal battle ensued, and I eventually gave over peaceful possession of store 143 back to CSD. I was tired of fighting. I was plain tired, period. I had lost my \$50,000 original investment, my \$20,000 working capital and my father's \$20,000 loan. I almost lost my home and everything I had worked for all my life. When CSD took over the store, I owed them \$70,000 in back rent, supplies, franchise fees and advertising percentages on sales. All other creditors were paid. I even arranged to pay back the Bank of Montreal over time.

In the over nine years I have been away from CSD, my store is now on its fourth owner. All previous franchisees after me have come and gone. One I know personally lost everything. In between franchisees, CSD head office runs the stores. Do they lose? Certainly not. They are not in the business to help franchisees succeed; in fact, they want them to fail. During the short period that owners like myself last, CSD makes buckets full of money from subleasing to us, while they hold the head lease with the landlord, from supplies we do buy from them and from the original cash investment given them in order to acquire the franchise. But the ultimate reward to

them: They resell the franchise to some other poor, unsuspecting soul for another \$140,000-plus.

They help put you in business, set you up to fail, and then, when reacquiring the franchise after you have failed, they palm it off again. This is where franchisors truly make their money: by reselling franchises that franchisees have left behind. Nice business practice, isn't it?

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You are forced to buy into their CSD insurance program—for fire, theft, liability etc.—that benefits no one but head office. A case in point was Mr Kuldeep Singh, the past franchisee of the Ottawa Russell Road store. His store had a fire and was gutted inside. It needed to be rebuilt. Of course CSD did the work, but installed used equipment and fixtures that had been removed from stores that were being renovated in other parts of Ontario to the newer, more modern CSD style. Shortly after Mr Singh reopened for business, he was told that he now had to renovate to the new style, of course at his own cost. I'm sure you get the idea of what I am saying. Needless to say, Mr Singh closed down for good, as did at least one other area franchisee. These stores remain closed to this day, with no visible CSD signage. There were no further franchisees to bilk.

In short, let me recap my presentation: glitzy brochures, along with unrealistic sales and profit projections on sales, in order to hook prospective franchisees; inflated pricing on authorized products supplied only by authorized suppliers or CSD themselves; reselling of franchise stores after inevitable failure of previous franchisee; insurance scams and forced renovations to comply with new CSD criteria; inflated rents on subleases as CSD holds head lease with property owners.

My story is not fiction but fact. I am to this day still paying back my debts in the form of a second mortgage on my home. I stiffed no one other than CSD, which stiffed me much worse. For this I feel no remorse. They ruined my financial health for 10 years. They did not suffer financially but in fact have made their money many times over from the same store. If you can help to stop this from happening to even one more person by way of enacting some form of legislation controlling franchisors, then my appearance before you today will have been very gratifying.

Please keep in mind that I stand to gain nothing from my appearance here today. I hope that by attending and making my views felt I can do my small part to stop franchisors like Country Style Donuts from taking advantage of people like myself for whom there is presently little or no protection.

In closing, I would like to thank Mr Ronald Dagenais, my lawyer and personal friend, and Mr Charles Gibson, who assisted me greatly as my legal counsel during my battle with CSD, and who I understand played a large role in the establishment of this committee. They are with Vincent Gour Gibson and Associates here in Ottawa. Without their tireless efforts on my behalf, at a fraction of what I should have paid in legal fees, I would have

been bankrupted and CSD would have won without a battle.

You can help to make a difference, should you so choose. Thank you for listening. I just care to add that I am out of the foodservice industry, I do not have the resources to get back into the foodservice industry and I am not here as somebody who is planning to get back into the foodservice industry. I'm here to present my case, let you know how I feel, what happened to me personally, and hopefully that will have some effect on the decision you take as a committee.

The Vice-Chair: Thank you very much. We have about 10 minutes for questions on this one.

I want to make it clear that when I introduced you at the beginning I thought you were representing Country Style Donuts, and actually you're a past franchisee. I want to make sure that's clear for the record.

Tony, your turn.

Mr Martin: First of all, I want to thank you for coming and telling your story because this is exactly what this exercise is about: hearing the truth, the reality, of what's going on out there and listening to some of the people who have become victims of, I would suggest, bad systems. They're not all bad systems, there are good ones out there, but certainly your story presents a picture that is quite troubling and presents some challenges to us here.

It takes quite a bit of courage to do this. One doesn't just wake up one morning and decide to come and speak publicly, as you did. The unfortunate circumstance in many instances is that people have signed confidentiality clauses when they've gotten out of their agreements and they've moved on to other things, so they can't come and tell their stories because legally they feel they're under threat or exposed.

I have a question for you. The speaker before suggested that the problem was, if I might put it crudely, that franchisees are just too stupid and can't read or don't read the material that they're given before they get into the agreement, and if they did we wouldn't have the problems we have. What's your response to that?

Mr Vanikiotis: I certainly am not a stupid man. I ran a business for a number of years. I have a college education. I think I can read. I know I can write. I had legal advice. It's the way that the franchise opportunity is presented to the prospective franchisee, at least in my case. When you are presented sales figures that are a little over 50% of actual figures, when you move into the store and start operating it's very difficult. You assume the figures they're giving you are warranted and that the figures they're giving you are correct. You assume the profit margins are correct. You assume that pricing is correct as has been described to you. You assume you're getting what you paid for and you're going to be getting what was promised to you.

There are probably a number of franchisees out there who may not have the capability to understand the English language as well as I do or as well as many others. They are probably few and far between. I think

most franchisees are very aware of what's going on around them. I just think they fall victim to circumstance, like I did. I didn't hear the previous gentleman's full speech, but I did hear that particular comment and I can't disagree more.

Mr Martin: Given your experience and the fact that you had disclosed to you probably as much material as you could get your hands on and had explained to you by your legal adviser and accountant, would a dispute resolution mechanism of some sort, a table that you could have gone to that would have had a third party, an arbitrator or a mediator, have been helpful to you in resolving some of these issues early on that so that you might have been more successful, or was the franchisor in this instance just so devious that even that would have been somehow ignored or used to their advantage?

Mr Vanikiotis: Let me explain to you that I can only speak for the Ottawa market. I'm born and raised in Ottawa. I've lived here all my life. There were four or five, maybe six Country Style Donuts stores here in Ottawa. Every single Country Style Donuts operation, every single Country Style Donuts franchisee in the city of Ottawa has gone through what I've gone through. Every single Country Style Donuts store in the city of Ottawa, in Nepean and in the region of Ottawa-Carleton has gone through the same thing. They have gone through a number of owners. They have had owners turn their stores back. They have had Country Style Donuts turn down prospective buyers in order that they themselves could take over the store and resell it. That's happened to at least two people I'm aware of.

I don't believe a dispute resolution process would serve any purpose. I believe the best thing is the fact that you people are looking at putting in some type of legislation to make it very clear up front what the conditions are and what both parties' responsibilities are.

Bottom line: If you would like to go into business, they will not change one word in that particular franchise agreement to your benefit. It's take it or leave it. If you like the business opportunity as is presented to you, you will take it. That's the trap I fell into and that's the trap that I believe many others fell into.

Mr Steve Gilchrist (Scarborough East): Thank you very much, Tony, for coming in today. It's certainly a very painful story that you've recounted to us here, and I do appreciate your taking the time and displaying the courage.

I find it more than passing strange the complete apathy of the media in dealing with not just these hearings but this issue. I guess they get their advertising dollars from Country Style Donuts so perhaps they don't see the merits in talking about the failures.

Let me explore a little further. I appreciate your last comment, and I think you were very candid with Mr Martin. If in fact at the outset you had been given, for example, a price sheet, a cost sheet of all of the supplies, something you could have gone to the Price Club, National Grocers or any of the other food wholesalers in Ottawa with and been able to compare costs, you would

have discovered, presumably even before you'd signed on the dotted line, the markup that your supplier had got. If you had received quotes for the mandatory insurance costs, you'd have been able to call and get competitive quotes out there. If you'd been given a complete history of the site and of all other franchisees specifically of that site, the real history, and if the data that they had told you represented the honest sales figures were made part of the contract and therefore would be seen as misrepresentation if in fact they proved to be untrue, would that have changed your perspective before you signed on the dotted line? Would you have bought that franchise knowing those sorts of details?

Mr Vanikiotis: Knowing what I know today, based on what I've detailed in my presentation to you, no, I most certainly would not have.

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Mr Gilchrist: But back then, if you'd been able to go and very quickly see that, "Wait a minute, by going through their supply, I'm going to pay 30% more," would you intuitively have thought, "This is something I should at least try and tack down during the negotiations to see if I can get it changed"?

Mr Vanikiotis: Very honestly, I wouldn't even have tried to tack it down. I would have walked away. It's that simple. As a businessman and as a person making a business decision based on an investment that I was making, I simply would have walked away.

Mr Gilchrist: So in a nutshell, if all the material details about running that business—not just the glitzy brochure—if all of the meat and potatoes had been available for you, it's your considered opinion that you would not have suffered that loss and you would not have bought that—

Mr Vanikiotis: It's not even an opinion. I would have walked away. It's that simple.

Mr Gilchrist: I absolutely am committed, and I can assure you for all three parties, that our goal in this is to build a bill that has that sort of protection in there. How anybody could disagree with disclosure—just an honest, upfront presentation of the facts—is beyond me. So I really think your time has been well spent in coming here today, and I appreciate those comments.

Mr Vanikiotis: There's one thing you have to consider in disclosure. Disclosure is all fine and dandy, and yes, it will definitely help because some people like myself will probably walk away. The problem with disclosure and with anything else is that when you as an individual need to get into a battle at some point in time with a company like Country Style Donuts or Maple Leaf Mills or whoever the franchisor may be, you will lose. You cannot afford to fight companies like that as a franchisee. They know that all of their franchisees, myself included, have limited financial capabilities. They do not have limited financial capabilities. They have lawyers on staff; they have people on call. They don't have any problem taking you to the wall and they will take you to the wall, and they will either make you walk away or they will break you financially for the rest of your life. It's that simple.

Mr Gilchrist: Scary prospect. Thank you.

The Vice-Chair: One final question. Mr Patten.

Mr Patten: Thank you very much for coming here today. It sounds to me like the legal framework provided the franchisor with the ability to make ongoing decisions that were a disadvantage to you. Did you consult with a lawyer—obviously, I guess you did, when you signed on the dotted line. But what information were you able to get about the company, the franchisor?

Mr Vanikiotis: We got their full franchise package. There were a couple of things that my lawyer cautioned against. Country Style wouldn't change a word in the franchise agreement. It was that simple. Looking at the franchise agreement and looking at the opportunity there based on the figures and things I had been made aware of—profit margins, that type of thing—with the potential that I thought was possible for that particular store, I didn't see a problem.

Mr Patten: It sounds to me like you had a case, a legal case, but you had run out of the resources in order to carry it out and go to court.

Mr Vanikiotis: There's no doubt about it. Mr Dagenais has been my personal lawyer and friend since 1980, when I got into the restaurant business. He has done many deals for me from a business standpoint. He made himself available to me at three different phone numbers, and this is a gentleman who has been in the legal profession for 30-plus years in the city of Ottawa. He made himself available to me basically 24 hours a day and put me on to Mr Gibson. Without their help, and without their help at very minimal costs, I wouldn't have been able to even walk away. I'm certain I would have lost my home and everything else; I guarantee it.

Mr Patten: My last question, just quickly. It seems to me that it might have been helpful if you had had some kind of registry that gave a profile, like you call the Better Business Bureau. People do credit checks on you. Why should that not also be available for companies in terms of their reputation or in terms of particular sites if it's not a new operation?

Mr Vanikiotis: I also think possibly a list of past franchisees for the particular area locations in this region, for example, so that if there is nothing to hide and they are marketing something that's a legitimate business that people can make a legitimate living from, then why cannot we, as prospective franchisees, contact previous franchisees to find out what happened? Did they leave? Were they forced out? Did they sell? What happened?

The Vice-Chair: Thank you so much for your time this morning, Tony. It was a pleasure to have you here.

MARK CONNOLLY

The Vice-Chair: Our next witness will be Mr Mark Connolly. You have 20 minutes, Mr Connolly, including questions. The floor is yours.

Mr Mark Connolly: I most certainly won't take 20 minutes. I have to get back to work. We're in the process of training somebody new.

I am Mark Connolly. I am a two-franchise store owner for Mail Boxes Etc here in the Ottawa area. We just took over our second store on January 13. I have to say that when I started in Mail Boxes Etc—it was five years ago—they had just opened up in Quebec. I'm originally from Montreal. I walked into one of their stores and I was blown away by the service I got and the whole atmosphere.

When I started investigating the franchise of Mail Boxes Etc, it carried on. I was blown away by the way I was treated. I was very impressed with the amount of information I was forwarded about the decision that I wanted to get into of buying a Mail Boxes Etc store. I made that decision five years ago this week. I had a store open within three months and the rest is history. I've bought my second store. I think franchising is great. I think full disclosure is a necessity. I had everything disclosed to me.

Hearing the last gentleman, I can believe the horror stories that are out there. I have heard some horror stories. In our own system we have a few horror stories as well. I would like to attribute these not to the franchisor but to the individual franchisee. Franchising is not for everybody. Owning a store is not for everybody. If you're not a people person, you won't succeed. That's not to take away from the previous gentleman.

That's about it. I think full disclosure is a necessity and I think that Bill 33 is an excellent bill.

The Vice-Chair: Questions first of all from the PC caucus.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): Mark, thank you for coming here. I just want to find out: In this original experience you had five years ago, was there anything negative in the disclosure documents they gave you—marketing documents, whatever you want to call them? Was there anything you might have been alarmed about but you said it's OK, you still wanted to make that decision, or was it all glorified and you still—

Mr Connolly: It was certainly all glorified. The presenter we had at the initial franchising seminar that I went to—the fellow's name was Ron Weston, a very dynamic speaker, a tremendous man—cut to the chase, saying: "This is what our franchise is about. If you're interested, pursue it. If serving the public and serving business people is not for you, leave the room now. Don't get involved."

In the secondary material that was given to us after we had initially said, "Yes, we are interested in Mail Boxes Etc," there was a pro forma statement given to us with regard to sales per year. That was all open. I have to admit that my own store went above and beyond those figures.

I've been in retail ever since I graduated from university. I am a people person. I'll be handing out my business cards afterwards, so you're all welcome to come to visit me.

Yes, it was glorified, of course. It has to be glorified, I think, to sell franchises.

Mr Gill: You said that in your system some people have failed.

Mr Connolly: Yes.

Mr Gill: In your original presentation, did they mention that?

Mr Connolly: Yes, they did. They mentioned I believe a 2% failure rate, either 2% or 5%. It goes back five years ago. Since then, we've more than doubled the number of stores we have in Canada. Mail Boxes Etc is a worldwide chain, and I'd like to believe a very reputable worldwide chain. That's my stand.

The Vice-Chair: Madame Boyer.

Mrs Claudette Boyer (Ottawa-Vanier): Thank you for your presentation. You knew what you were coming to say. I guess you were coming to tell us that you are in favour of Bill 33.

Mr Connolly: Yes, most certainly.

Mrs Boyer: But you think that disclosure is a very important issue in this bill. If you've read or heard about Bill 33, is there any other fact that you would like to bring in? Do you think that it goes far enough? Do you think it should be stronger in the statements that we make in the bill?

Mr Connolly: With regard to being able to network among franchise owners, associating with franchise owners, we've always had that. In our franchise agreement we must belong to an advertising association of our peers. So on a monthly basis we're getting together, discussing not only advertising but our sales, the good things about the franchise, the bad things about the franchise, how we can collectively get together to improve the franchise. We've always had that, so I don't know the other side of the coin. I've always had it, and that's why I feel that any franchise that is not offering that, it's as though they're not only holding back information; they're holding back their franchisees from being successful. You've got to have a peer group, and to hold somebody back from joining a peer group, there's something wrong with that. So yes, we should be able to associate with our peers.

1120

Mrs Boyer: I understand the point. What you're doing is good. But do you find that Bill 33, the legislation that will be coming up, and that's why we're doing these hearings, is going far enough as far as protection both for the franchisee and the franchisor?

Mr Connolly: Can you define "far enough"?

Mrs Boyer: Have you read Bill 33?

Mr Connolly: No, I haven't read it. I was just told about the hearings.

Mrs Boyer: So you were just coming here to say that disclosure was very important.

Mr Connolly: Most certainly.

Mrs Boyer: And then, yes, protection is important.

Mr Connolly: It should be paramount.

Mrs Boyer: You're in favour of saying that the protection should be both for franchisees and franchisors, for both parties?

Mr Connolly: For both parties, yes. I think if there's full disclosure, it would protect both. My situation has been a very positive situation with my franchisor, so I don't know what some of the other stories are. I don't see how a franchisor could be damaged by a franchisee, however, short of them selling off their stores.

Mrs Boyer: Thank you.

The Vice-Chair: Mr Martin.

Mr Martin: I must say up front that I'm happy for you, that your story has been successful and hopefully will continue to be.

Mr Connolly: Let's hope, store number two. We hope to get store number three eventually.

Mr Martin: That hasn't been the case for a whole lot of people, including the presenter before you. The Canadian Alliance of Franchise Operators and myself have documented two tomes of stories that have appeared in the press over the last seven years in Ontario alone, 4,600 families who have been damaged by a franchise relationship.

In fact, one that I'll point to involves Mail Box Etc, if any of you brought your stuff with you. I know it's heavy to carry around. But it's tab B-31, and it's the story of a Peter Thomas, who actually sat in on the hearings in Toronto on Monday. He didn't get on the list because the list was too long. He lost his business. He claims it was primarily because he was sold a location that had no parking for him and it turned out to be a failure because of that. He wasn't told that before he got into the business. That little piece of information would have made all the difference for him. He lost \$170,000 and now he's struggling with cancer, he's on chemotherapy, and some of that is driven by the stress of this whole circumstance. He's been threatened. He was threatened particularly when he went to the press with his story, over the phone. His life was threatened, and it's just not a pretty picture.

If your company should get sold, and that's happening every day now—we just heard the other day that 241 Pizza bought out Robin's Donuts, and I suggested a scenario to the Tim Hortons gentleman when he was before us in the Soo yesterday. If Pizza Pizza, for example, which has this terrible reputation, continues to have a franchisor who was criminally convicted in Florida and is now continuing to operate in Ontario, bought out Mail Boxes Etc, is there anything in your contract to protect you? And is there anything in legislation that you think we should be doing, in an instance such as that, to make sure your investment was protected?

Mr Connolly: I would certainly hope there is some legislation to protect me. In my own franchise agreement, which is signed with Mail Boxes Etc Canada, I would have to reread my franchise agreement to see if I am protected. It was five years ago that I read that. That's a horrific thought, if somebody came in and bought us out. Presumably we would still maintain our same name—

Mr Martin: I would hope so.

Mr Connolly: —and carry on the same business. My philosophy has always been that I am my own boss. I

drive my store; I promote my store; I do everything to get the customer into my store. I have the backing of Mail Boxes Etc, with the name and with their nationwide marketing as well. If somebody came in and bought the name Mail Boxes Etc and started dictating certain rules and regulations, I am hopeful that my original franchise agreement would save me, because that is the agreement I signed.

Mr Martin: Check it out, because in my own town we had a couple of grocers who were model corporate citizens, Loeb. You had them here in the Ottawa area too, and you probably remember the story. It was in the mid-1990s. Provigo bought out Loeb and they lost their stores overnight. They literally slept in their stores for about two weeks while they negotiated an agreement that at least gave them some return on the investment, the work and effort and goodwill they had built up over a number of years.

But I'd go back and read my agreement if I were you, and get some advice on it, because that's the day in which we live. We're here today considering some legislation that might protect people like you who are hard-working, dedicated and committed, and just want to be successful business people. Thank you very much.

Mr Connolly: Let's hope all the legislation gets put into place so we can sleep at night.

The Vice-Chair: Mr Connolly, we really appreciate your time this morning. Sorry to have kept you waiting; we were a little bit behind schedule.

Mr Connolly: That's fine. I've got another two minutes of parking left.

The Vice-Chair: Thank you for your participation.

KELLY WELCH

The Vice-Chair: I now call on Mr Kelly Welch for our final presentation of the morning. Mr Welch, the floor is yours for the next 20 minutes if you wish.

Mr Kelly Welch: Mr Chair, honourable members, ladies and gentlemen, my name is Kelly Welch. I and my wife operate a small IGA in Marmora, Ontario. Marmora is a small town of about 1,600 people situated north of Belleville and east of Peterborough on Highway 7. My family has operated this business for 29 years. I'm a second-generation grocer. We are one of the three largest employers in our town. We employ about 40 people. Our business does about \$5.5 million a year in sales.

We are currently dealing with Sobseys. Previously we dealt with the Oshawa Group. I don't know how familiar you are with what's going on there, but currently we are renegotiating our franchise agreement, which we signed back in 1980. The gentleman who was before me, who said that he wasn't sure what would happen if he got into that situation, would have his eyes opened very wide if he went through that process now. I'm one of 30 stores out of 140 that have refused to sign the agreement. I feel very strongly that the agreement that has been proposed to us is slanted very heavily in their favour.

As a family business, we're very active in our community. We spend a lot of money and resources supporting our community. If there's a hockey team or a ball team or any kind of sport, we're there supporting it with money. Personally, I coach hockey. My wife is involved on the library board, committees of council, volunteer firemen. We feel very strongly that without this commitment to our community, our business will not grow and it won't be successful.

Over the past number of years, starting probably around 1990, we started to notice a change in the way our franchisor dealt with us. It was very subtle, but it was definitely a change. Our ability to support our business and our community started to deteriorate. The reason was that our franchisor was starting to take advantage of their very powerful position within our marketplace. At that time there were actually three wholesalers or franchisors that we could deal with. There was National, Oshawa Foods, at that time, and Lumsden. Currently there are only two. If we don't like what's going on at Sobeys, as an independent grocer I have absolutely nowhere else to go. They are very aware of that.

In this month's Canadian Grocer there is an article on the franchise agreement and it says that the problem is almost over, there are only 30 stores left, and Doug Stewart, president of the Empire corporation, states that if you don't want to buy through Sobeys, you shouldn't be in IGA. Well, if I had an option, I'd certainly be considering it. But right now, as an independent grocer in our market, Sobeys and National are controlling a huge portion of the market and aren't really interested in dealing with independent grocers.

1130

Our relationship with our franchisor has deteriorated because they have not honoured their obligations under our current franchise agreement, the old one we're staying with. In addition, currently they're attempting to increase their power over us with new agreements that do not reflect the nature of our ongoing business and ignore some of the basic business etiquette that requires them to deal with us fairly as a business partner.

I'm really pleased, and actually excited, about this legislation that's coming forth. It couldn't be more timely. I've read the bill. I'm a member of the Canadian Independent Grocers Alliance, Sobeys stores that have grouped together. We have talked about this legislation with our lawyers and what's in it today will really help soften some of the imbalances that exist today in our marketplace.

This legislation allows franchisees to associate with each other and exchange information. It's really funny: around 1991 a group of four IGA dealers attempted to form an association. Within two to three years, none of them was in the business any more. So although maybe no store was ever prosecuted or put under the gun, it was handled very subtly and very quickly.

The legislation also requires franchisors to produce information and pro formas that have some meaning and substance. It's a wonderful thing. It's hard to make a decision with information that isn't accurate and sub-

stantial, and I really applaud the efforts and I'm quite excited about it.

One thing that I am concerned about is the fair dealings, as some of the speakers I've heard this morning have brought forth. I'm not a lawyer, but through my view of things the current bill doesn't define the term "fair dealings." There's no definition given with regard to its meaning or its intent. Accordingly, there are no consequences stated for those who overstep those bounds or don't honour their obligation. I'm concerned that this statement, without proper definitions or consequences, will have no legal meaning and will not really help deal with the day-to-day problems that you run into that are interpreted within the franchise agreement. I'd like to give you quickly a few examples of some of the things we've run into over the years.

Fidelity programs: Fidelity programs require us to buy a certain percentage of our purchases from the franchise or warehouse, or we will be penalized. Currently, my old agreement requires us to purchase 100% of our products through the house. The proposed new agreement offered to us by Sobeys increases our costs on a sliding scale, depending on what your fidelity is, ranging from about 80% or 85% up to 95%. This is beneficial to the franchisor simply because they can force manufacturers and producers to pay listing fees and other inside monies. It forces everything through the house and gives us very little control outside the house. If you would like some information on that, the standing committee on industry—I think it's Dan McTeague—has produced a report and there are some real insights in that paper on the operations of our business, on inside monies.

This type of system for me, though, a small-town grocer, ignores the obvious benefits of dealing locally. We have a local small dairy and there are people in our community who work at it. I can't support that dairy because I'd get put into a situation where I'm disadvantaged price-wise. The same with eggs. We have a local producer of eggs. There're nothing more I'd like to do than deal with them and we can't. Fidelity programs put my business at a competitive disadvantage if I support my community. It goes as far as equipment—to everything. It covers everything in our agreement.

Disclosure and pricing: A portion of our business comes from what we call direct shipments. Typical products that come direct would be milk, pop and chips, probably the three largest. Sobeys or wholesalers, whatever, restrict manufacturers from dealing directly with us on pricing of these products. We actually order through the manufacturer or producer and they deliver it to us. Our franchisor never touches the product. My cost on a bag of milk is \$3.48. Rumours on the street and from talking to my associates—and nobody will ever come forward because of fear of repercussions—are that the Sobeys cost of that same bag of milk which they never touch is somewhere around \$3.10. That means that if I'm competing against a corporate store, a YIG or a No Frills, they're making money inside the house. I can't; my cost is that much higher.

Other issues are volume rebates and co-op money. My current franchise agreement requires my franchisor to pass on all volume rebates and co-op monies in the form of reduced product costs. Over time, it's amazing the change in the definitions of what volume rebates and co-op monies are. We've got published co-op. There's just a whole array and what we were getting previously has been slowly chipped away at. The problem with this is that there's no way for me to audit their books to see if the monies that are owed to me are coming. There's no disclosure, yet they can come in and audit my books completely to make sure I'm being true to the program or keeping my fidelity rate current, which to me just doesn't seem fair.

Subsidies: Stores in similar competitive markets are being subsidized at different rates. We have situations where the profits from our programs are used to subsidize some stores but not others. If a traditional dealer, like we are, one that owns your property, business etc, suffers a loss, we suffer a loss. If I lose \$100,000, it comes out of our pocket, out of our business. There are situations where non-traditional dealers or the new franchise dealers who make an investment into the business, as we say—and this may be a little terse, but they buy themselves a job—if they run at a loss, it's washed out. It just comes back to zero and we start over again. So it makes it very difficult for us to compete and to keep our money or to compete with other dealers and other franchise sort of dealers.

Those are some of the things that we've run into, conflicts that come up over and over again. That's why I think Bill 33 should make some sort of definition of what is meant by fair dealings, that the disclosure clause should include products and prices and all that kind of thing. It's good for us. It's fair. It's what the franchisors say they're doing anyway, and it would help me in my situation keep more money locally, where it should be spent anyway, because these are my customers, and keep it out of that large corporate bank account.

Thank you very much for letting me have my say. If there are any questions, I'll try to answer them.

The Vice-Chair: Thank you very much. Probably we'll have questions for sure. The Liberal caucus.

Mr Patten: Could you elaborate on the four stores that slowly went out of business? What really went on, in your view?

Mr Welch: This was when we were with Oshawa Foods. Again, a lot of this is speculation, but it's very interesting. At that time we were not fighting but there were many, many questions about these direct shipments, this inside money that was supposed to be being passed on in the form of volume rebates and that sort of thing. Four stores got together and decided we wanted to form a dealers' association, in which we were all to put in I believe it was \$500 and have an association that would deal with some of these issues that were over and above. A lot of different personalities in the stores, blah, blah, and it had a little trouble getting going, but it did start. But over time, about a two- to two-and-a-half year

period, these four dealers disappeared. I believe at that time a new president came in and spoke some truth and it kind of settled back down.

What I'm trying to speak to here is the thing of being able to associate. Although they say they allow it, sometimes, in my mind at least, it gets handled in a very subtle way, and it's nice to have this legislation that gives us that right.

1140

Mr Patten: I thought your comment on not being able to support your own community was a very powerful statement.

Mr Welch: We feel, as family and a business, really strongly about that. We go to extra lengths. Our business will only grow with our community. Also, just on the other side, I live in that community, my children grow up in that community, and we need to be there. It's hard, if the monies aren't available for us to invest. If I want to renovate my store or whatever, we use all local, and that type of thing, and that's what that's about.

The Vice-Chair: Tony, from the NDP caucus.

Mr Martin: Thanks for coming. We've all heard stories in the grocery industry. Many of us remember the Loeb situation of the mid-1990s where Provigo came in and between 20 and 30 franchisees—these small business people in my community, just first-class corporate citizens—were gone. We're not going to hear from them because they signed confidentiality clauses, so we don't know the story. So it's good that you're here today telling us your story.

Yesterday, we had in Sault Ste Marie about six local producers, mostly agricultural, such as dairy and beef, and they talked to us about the challenges that they're facing. It's killing our local economy.

Mr Welch: It's certainly hampering the small independent business person, that's for sure. No question.

Mr Martin: I hear you asking here for something in the legislation that defines and gives you some protection as far as the ongoing relationship is concerned. We've heard that over and over again, particularly where we've heard individual stories, that there needs to be something in the legislation that speaks to the ongoing relationship and regulating that so it's fair. At least you'd have, if nothing else, a table you could go to, some kind of an arbitration process where it doesn't cost you an arm and a leg for lawyers and doesn't get you into the courts, because that's not where you want to be and you want to work this out.

I sense some resistance to that. I would ask the members of the governments to think about it and consider it, with all due respect. Maybe you could comment?

Mr Welch: My only concern with an arbitrator and mediation is typically what happens—and understand, I don't know a lot about this, but when I perceive it—the arbitrators and the mediators are probably dealing with the large franchisor on a more regular basis than they would be with us. It's very hard for a small-town grocer like myself or like anybody to come and make a presentation in front of an arbitrator who probably has

dealt with a lawyer from that company on three or four occasions, and you really have trouble trusting that. Maybe that's not a reality. I don't know.

You asked me—there seems to be a bit of hesitation. When they start talking about mediation and arbitration and whoever the chair happens to be or the arbitrator, I would want to make they were a third person who really had no relationship. That would be my personal concern.

Mr Martin: That's what I'm suggesting, a third party. Thank you very much.

The Vice-Chair: Steve, any questions?

Mr Gilchrist: Thank you for coming in. I hope it's not a conflict of interest that I've actually shopped in your store.

I do appreciate the local perspective you bring to this. Coming from a Canadian Tire background, I share some of your perspective on how things evolved over time because, as good as that franchise was and is, there was certainly a change in the decades that I was there between completely trusting—everything done with a handshake—to something far more disciplined. Maybe that's necessary with the onslaught of American retailers and what have you, but I think something has been lost in the relationship.

With the greatest respect to Tony, I'm a firm believer in giving people all the tools up front before they make a decision, truly believing that that would resolve an awful lot of the problems. You talked about pricing. You talked about access. If all of those details were known to a prospective IGA dealer today, do you think that would solve a lot of the problems, of the kind that are reported in the press, and the kind from that gentleman you may have heard earlier this morning from Country Style Donuts, if you know you have a limited range and if you know the volume rebates are going somewhere else?

Mr Welch: Yes. Any information helps. It also has to be not just at the beginning. In our situation, it's an ongoing thing. If a new merchandising program is introduced—an example we had was signage a few years ago; they wanted us to re-sign our stores and it was a very expensive package, ranging anywhere from \$10,000 to \$30,000. A year and a half, two years later, "Oh, we've changed packages."

We had the same with our computing system: "This is going to be our platform for the future." I invested in that. Just in hardware, it was over \$20,000. I didn't have to change my tills. We actually tested it at our stores. At the time, I wasn't thinking; it was supposed to come already tested and working. I probably spent, with man-hours etc, double that. It never came through on what was promised, and we've got a different system now. Those kinds of things are hard to handle. I think at the time they actually believed they were doing what was in the best interest, but you get a change of regime, and all of a sudden everything changes, and we bear the expense of that.

Sobeys and Oshawa Foods have been very good to us in the past. Don't misunderstand me. We've been very successful. My fear is what's coming and what's happening now. Most of the changes occurred for us

around the end of Ray Wolfe's era. He was sort of the beginning of it. That's when you started to get into presidents who weren't family. Now we're into a corporation-style environment and we have no protection from that.

Mr Gilchrist: What sort of volume would it take to justify setting up a third wholesaler again, if those 30 of you who have said no—

Mr Welch: To hit critical mass, you would probably need around \$1 billion sales.

Mr Gilchrist: Outside of your 30, looking at all the others that are similarly constrained right now—I'm just curious to know why the marketplace hasn't sorted that out, or even within subcategories.

Mr Welch: The problem is that you have two wholesalers, actually vertically integrated retailers—they're not even wholesalers; there are no wholesalers any more—who control such a huge percentage of our market that even if somebody else came in, and I don't know who that would be, but they'd have to have a ton of capital behind them; they would probably get purchased if they were allowed to, and then to amass that many stores. Although there are 30 stores that haven't signed, there are probably only eight that could give their 30 days' notice and move. We can do that. My biggest fear is that they're going to give me my 30 days' notice. I have nowhere to go. That's why a number of these are probably done in quiet. I can't do that. I have to sign my name to newspaper articles.

Mr Gilchrist: Thanks again, Kelly. I appreciate it.

The Vice-Chair: Thank you very much, Kelly, for your presentation. It's a pleasure to have you here this morning. I'd like to thank the committee for the good work this morning. We'll adjourn now.

Mr Martin: I might suggest this just for some thought for Mr Gilchrist, Mr Gill and all of us. More and more the issue of competition comes in here; right now we've just heard of two big grocery giants who control. This might be worth considering, and I don't know how you do this. This is the first time we've gone to public hearings after first reading of a bill, and I don't know whether this fits or not, but we might want to, at some point, make application to appear before the federal Competition Bureau to ask them questions or to lay on the table some of what we've heard. I would suggest that we think about that and find a way to see if that isn't something that would be helpful to us all in this, because the two things are sort of integrated, it seems, or have some connection.

The Vice-Chair: We can't let the gas-busters look after that for us, can't we?

Mr Gilchrist: Tony has raised an interesting point there. There wouldn't be one consumer in 100,000 who knows that the evolution of the grocery business out there, the concern that's out there right now, because the media has decided it's finally fashionable to talk about it. So all of a sudden it becomes an issue. But we still have four major gasoline refiners and distributors.

If we're down to two food distributors, something that is indispensable—I mean, you don't have to have a car

and buy gas, but you do have to eat—why has there been no federal inquiry on that? Why did the Competition Bureau allow that restraint of trade to take place—all very quietly, to be sure? But when Lumsden disappeared, that was the last of the independent, non-vertically integrated wholesales that was gobbled up.

Tony, at the end of all of this, depending on the conclusions we come to, one of the things this committee might very well be advised to do is to make either a formal representation or to seek standing before that committee and compel them to answer some of the questions we come up with. I appreciate your raising it.

The Vice-Chair: Thanks, committee. We'll adjourn, and we're back here at 1:30.

The committee recessed from 1151 to 1334.

CANADIAN FRANCHISE ASSOCIATION

The Vice-Chair: Ladies and gentlemen, we'll call the meeting back to order.

Richard Cunningham from the Canadian Franchise Association.

Mr Richard Cunningham: Good afternoon, everybody. As you heard, my name is Richard Cunningham—no Happy Days jokes, please. I'm the president and CEO of the Canadian Franchise Association. I have held this position for seven and a half years. I was also one of the four founding members of the World Franchise Council, and served as its first chairman. The WFC is an international body, currently with over 30 country associations working together to assist the franchise community and promote franchising on a global basis.

I have also been a member of the Franchise Sector Working Team since its inception. For the record, I have not been a franchisee or a franchisor, but I have owned and operated my own small business, which required investing my life savings. So I am familiar with many of the problems, stresses, daily issues and hurdles that a small business owner faces every day.

I also think I bring a unique view to this table. Unlike most presenters you have heard from, who represent one particular group or interest, my position and exposure to the public brings me calls and meetings with happy franchisees, franchisees who are upset and have locked themselves in their stores, excellent franchisors and those I have to call and tell that I have declined their membership. I am pleased to be here today to offer our association's and my personal views and experience on Bill 33 and to answer any questions you might have.

Let me begin by congratulating the government on the introduction of this legislation. As you have heard repeatedly, this is a huge step forward for franchising in this province. The effects it will have go beyond Ontario. Most franchise businesses operate interprovincially. I want to commend you and my fellow members of the Franchise Sector Working Team for the years of work that have been done to date and the efforts that have been made to address the concerns of franchisors, franchisees

and, of course, those who are considering a franchise opportunity.

I'd like to begin by giving the committee a background of the CFA and the interesting role we play as a trade association. The CFA was founded in 1967 and is the national trade association for franchisors and the suppliers and professionals who are involved in this industry. We are the second-largest association of this kind in the world, and although our members consist of most of the larger systems in Canada, most importantly we count many new and emerging franchise companies in our numbers as well. We encourage these newer players to join so that they can learn, network and meet with other icons in the industry to achieve excellence in franchising.

The CFA's role is unlike that of most trade associations. Membership in the CFA is not automatic. We put all new members through a review process, similar to the process that we suggest a new franchisee perform. Memberships are scrutinized by lawyers, bankers, consultants and franchise peers for eligibility. We provide a 1-800 number service, accessible from anywhere in North America, to answer questions and provide information about franchising. We have a Web site, where those doing research can find the names of lawyers, bank contacts, seminars and CFA trade shows across Canada, as well as suggested questions for franchisees to use when they are checking out a new system. We own and offer two trade shows in Canada, and those shows are limited to franchisors only. No business opportunities, vendors, etc are allowed to participate, and we do not allow closing rooms on site, which means that we discourage franchisors from trying to take deposits or take franchisees any closer than an introductory meeting at our shows.

These shows also have seminars presented by the pros in the industry on how to buy a franchise, including presentations, most importantly, from franchisees who have gone through the process and can talk first-hand on what they did and how they did it before they made their decision. Almost all of our print material at the CFA has been developed to assist potential franchisees. We have information kits, directories which we produce nationally, and a list of businesses and stories, again written by professionals, all in the name of giving good advice.

Our television show, which airs nationally and has been on the air for seven months, has segments talking about the process of starting a small business and the steps people should take before they buy a franchise.

We are the only association in Canada that offers seminars in five cities in five different areas of the country on the process of investigating a process—again, three-hour seminars, three speakers, lawyers, bankers and again a franchisee. We make them very accessible and keep the cost down. They virtually run at a break-even for us or a small loss.

1340

My office and I personally answer hundreds of calls a week with the aim of trying to assist the public. Although we can't tell them what to do, we can direct them to

many resources that will help them make the right decision.

You have heard from previous presenters that many individuals are excited and make decisions from their hearts instead of their heads. I see this every day. For many, the word “franchise” has become a symbol of large, long-standing companies that seldom have failures. But the reality is that there is risk, there is failure and the buyer needs to be aware of that.

I have been asked over the last couple of days why we are primarily a franchisor organization and why, as such, we would spend so much time and effort working with potential franchisees. The answer is simple. As in industry, one bad player can harm the reputation of the entire industry. The more we can do to police this industry and assist buyers in making the right decision, the better it will prove to be for everybody. But we do have to understand that we are a trade association and, without any legislative authority, we only have moral suasion. Anybody who participates in our events is doing that strictly on a voluntary basis.

We have all heard the horror stories: the failures, the unfair practices and the losses suffered by some franchisees. But one thing I have learned in my seven years with this industry and in getting into the middle of a lot of these disputes is that there are two sides to every story.

I would also like to set the record straight about numbers thrown around this table and provided to media. No one, including myself, can substantiate any of the claims about franchising success or failure rates. Statements made by the CFA about success rates are based on information provided primarily by the banks. As you’ve heard, the banks are very involved in franchise business and their statements to me are that franchise loans to franchisees are better performing loans than to independent businesses. It might be prudent for the committee to consider asking a franchise specialist from one of the major banks to comment further on this area.

The study of franchises, by its nature, is difficult because of the cross-section of sectors. In fact, franchising crosses 42 sectors of the economy. The stats you heard earlier in the week from the US, under more careful examination and review by an economist, were taken on one industry sector and from the smallest franchisees in that sector. Obviously the success rate for a new system may not be as good as that of an older system, and that brings another twist to the complication.

Let’s face it: If the franchisor-franchisee relationship is marred by excessive fees, inadequate services and poor support from franchisors, then it is extremely difficult to explain why, both in the US and Canada, franchising has continued to expand much more rapidly than the economy over the past 25 years.

During the 1980s, a proliferation of franchises were being sold and bought. A lot of people were downsized, had money in their hands and were out looking for something to do with it. Franchisees and franchisors had more locations available to them and were busy selling and buying without really checking each other out. The

CFA did not have the presence in the public that it has now. We didn’t have the trade shows, the television show and the Web site. Trade shows were run by privately run companies and had biz ops, vending machines and a number of other businesses involved at the same time as trade shows, but the quality wasn’t being watched.

A lot of the problems with the franchisees that you have heard over the last couple of days, including the Pizza Pizzas of the world, are a product of that time frame. You’ve heard from Mr Javor and others that franchisees are far more careful today than they were back in those days, in the 1980s. They do their homework. Our checks and questions of franchisees have found that they take an average of six to nine months before they make a decision and actually sign on the bottom line. Also, because they don’t have these packages and the money and aren’t being downsized at the rate they were in the 1980s, they are giving up a job rather than having left a job, and that makes the whole process a very different one from their perspective.

Franchisors are also more careful. Franchisors are now using systems to evaluate if the profile of the potential franchisee meets with the successful franchisee and their system, and they’re providing more information.

Following the introduction of this legislation, all CFA members were sent a copy of this bill, asked for their feedback and encouraged to take part in these public hearings. Our position on these issues has really not changed since August 1998, when the government introduced the draft legislation.

This submission combines the consensus of opinion from our members, the positions we have historically taken on key issues and the need, in our view, to provide consistency in Ontario with the existing legislation in Alberta.

Let me briefly state our position on Bill 33. First, disclosure legislation is the right thing for the public and the industry. Our association initiated disclosure rules four years ago on a voluntary basis and two years ago on a mandatory basis, and it has proven to help both franchisors and franchisees.

Second, no legislation is a substitute for “Buyer beware.” Giving new franchisees information will only help them if they use the information provided to them by this bill. A level playing field that offers franchisees certain protections without driving up the price of entering the business through expensive and excessive over-regulation offers the best balance.

Third, we feel that statistics must be gathered in the bill before considering anything beyond what the Franchise Sector Working Team has proposed. As many of you know, this area is very important to us, and something we’ve been trying to work with ministry officials to implement. As an organization, we feel that we have the resources and expertise to perform this function and will continue to push for this important mechanism.

Fourth, the ministerial exemption process that is in place needs to be easy and simple, and must be available to mature franchisors prior to the bill taking effect.

Finally, we understand that it's necessary, in order to shorten the length of a bill, that a number of the elements dealing with the legislation be left to regulation. It's always difficult to assess the real value of a bill when important components will be defined later through regulation. But I'll touch on some key areas that we feel are very important and should definitely be included in the bill.

The broad disclosure requirements proposed by Bill 33, as well as the terms and conditions proposed to ensure timely transmission of the disclosure documents: We believe the format of disclosure documents should be harmonized across all Canadian jurisdictions that currently require or may introduce future requirements for pre-sale disclosure to potential franchisees. The proposed disclosure legislation is an appropriate and judicial regulatory response based on what we accurately know about today's franchise industry.

The review engagement letter and/or commercial credit reports, we feel, are the optimum tools to allow potential franchisees to accurately assess financial viability of a franchisor system. Audited financials can be confusing. Commercial credit reports actually provide more potential franchisee information in plain English.

Exemption from disclosure should only be given to franchisors who meet criteria which clearly demonstrate that they are financially and organizationally able to assure prospective franchisees that they are stable and that this is a viable investment. Of course, we strongly support the issue of fair dealing requirements in this bill and the right to associate.

The CFA looks forward to continuing our support and involvement in the drafting of those regulations. We believe that with our experience we have an important role to play in ensuring that the regulations benefit both franchisors and franchisees. We're pleased the minister has already assured us that we will be consulted, and look forward to working with ministry officials on this in the future.

Disclosure provides an enormous wealth of information to potential buyers. When introduced, our members said that the CFA disclosure document was the best selling tool they ever had, because it started the relationship in an open and friendly format.

Think about this one element alone in Bill 33: A list of all franchisees in the system and those who have left. I have personally called and spoken to franchisees in a system. We do this as part of our review process for new members. I can assure you that after a few calls to a franchisee asking some simple questions like: "How do you enjoy the system? Were there any hidden costs? Is the training accurate?" you get a very clear picture very quickly of what that system is, where its problems are and whether or not it's one you want to join. If I provided you with a list of Pizza Pizza franchisees, present and past, and you called David Michael, what would your decision be regarding that purchase, regardless of the information you got anywhere else, from anybody else?

1350

This is a good bill. It takes franchising a long way in one big step. Franchising does account for \$90 billion a year in sales across Canada, 60% of which are in Ontario. It would be irresponsible for this government, or anyone, to move away from what the Franchise Sector Working Team has unanimously agreed upon and proposed and is supported by virtually everybody you've heard in the last two and a half days.

On behalf of the members of the CFA, I would like to take this opportunity to congratulate you on opening up this process through these public hearings. You've given franchisors, franchisees and, more important, the general public the opportunity to study this bill and offer their comments.

The CFA looks forward to continuing their work with the government and the officials and the members of the opposition in ensuring that this legislation is workable and fair.

The franchise industry is an exciting one. It has offered profitable business opportunity to thousands of people. One million people work in franchises across Canada. We support this industry and the efforts of this government to make it better.

Thank you.

The Vice-Chair: Thank you very much. The first questions are from the NDP caucus.

Mr Martin: I appreciate the work that was done by the working group in getting to where we are today, and with myself and others encouraging the government to move forward and take this out to public hearings so that we might hear directly from some of the people who are caught up in the system—some doing well, some obviously struggling and others badly damaged. We've heard from a significant number, I think, over the last two or three days, and you've been with us and you've heard the stories too.

As a franchise association claiming membership across the country and claiming to have the best interests of the industry at heart, and in listening to the stories that are brought before us—and these aren't people who are looking at getting into a franchise; these are people who have already been in the franchising industry and have had certain experiences. Most who have come before us have had some very difficult experiences. Does that not cry out to you for something in this bill regulating the relationship after the contract is signed so that there is recourse for them to solve some issues before they end up bankrupt or not well from a health perspective? Does it concern you for them personally, and doesn't it concern you that this has a bad impact on the industry itself? If you listened to Professor Hadfield this morning, when the reputation of the industry isn't good, the efficiencies that could be had by more people investing are limited.

Mr Cunningham: I'll answer the first question, which is, what are my feelings about people who are in the system now and how can legislation help them? As I understand it, first of all, legislation is difficult to enact

retroactively. For you to put legislation in place now to go back and try to deal with situations that started 10 years ago or five years ago or whatever, we'll be wading into a situation that would be complex, difficult and probably, as we've heard before, a field day for lawyers.

No one wants to see franchisees in trouble with their franchise. As I said earlier, I own my own small business and, when you're into that and you're up to your armpit in alligators, you're always looking for someone to help you out of the that situation. In this case, as I would understand it, certainly fair dealing would come into play immediately, as would the fact that people can associate, have the right to associate. Those two elements in themselves, aside from the other issues, I think would be of great benefit to people already in systems. I think there needs to be more education so that people who are in systems know where to get help, not necessarily just from lawyers, but where they could seek more advice even from each other as franchisees which, as we've heard in some cases, they can't, especially in bad systems.

Mr Martin: How many franchises belong to the Canadian Franchise Association?

Mr Cunningham: Directly, none.

Mr Martin: OK. You're quoted in an article in this tome that I've been carrying around, and for those who have it with them it's B55: "By the time [franchisees] have a problem, they're probably out money, if not out of the store, and they're too far down the road." These are small business people. These are the people who are the heart and soul of many communities. By the comment you just made a few minutes ago that we can't do anything about that, are you willing, as the spokesperson for the Canadian Franchise Association, to cast them into the wind?

Mr Cunningham: No, that's not my intention at all. What has to be defined here is, of those people, who as you say have lost their money or are about to lose their store, how many were a result of the franchisor's doing, the market's doing or the franchisee's doing? Those are the kinds of statistics we don't have. You don't have them and I don't have them. If it's a result of market force, the market played a force on my business too. In the case of franchisors who are mistreating their franchisees, one of the options we opened to people when I made that statement was a mediation service which the association has available across Canada for members, non-members, anybody who wants to use it.

Mr Martin: How many times has it been used?

Mr Cunningham: It has only been used a couple of times. To talk to that issue, we feel that the problem with that has been partly lawyers, because mediation is something which can be done quickly and for far less money than going to court.

Mr Martin: Could it possibly be that you don't want to take it on because the members of your association somehow bring pressure to bear? I've got a letter here from Bulk Barn franchisees that has been delivered I

think two or three times to your office and has been refused, I'm told. Is Bulk Barn part of your organization?

Mr Cunningham: Yes, they are.

Mr Martin: I'm going to deliver it to you personally here today so that you will have it and hopefully respond to them, because they're looking for some resolution to a very difficult circumstance they find themselves in. I suggest that there are a lot more like Bulk Barn out there who are going to find themselves in the same circumstance, particularly if what we've heard these last two or three days continues and escalates.

It seems to me that what we need in this bill is some dispute resolution mechanism. I'm not convinced of what that vehicle could be or should be, but we need to be taking seriously the need for this. If there's one area that I would challenge you in, in terms of your presentation here today, it's in that area. We need something that people who are aggrieved at this particular point in time, and who will be aggrieved down the line, whether it's franchisor or franchisee, can go to without having to get into a very legalistic vortex with lawyers and the cost that represents. Perhaps we can resolve some of these things so that the franchise industry, which is very important in Canada and the US, stops developing the reputation that seems to be growing here now and creates those efficiencies that Professor Hadfield talked about this morning.

The Vice-Chair: The next speaker is Mr O'Toole.

Mr O'Toole: Thank you very much for your presentation. I have just a couple of quick ones, and maybe other members have a question as well.

I agree with your advice that getting a bank franchise loan officer to present to the commission would be helpful. Whether that will happen now or in the short term, they can always write in a report. If you know of any, it would be helpful.

We also heard of the shortage of franchisees. If you want to respond, you can, but I don't see that as a problem, technically. I just think it's something we heard from somebody.

There are a couple of other good pieces of advice I'd like you to comment on. The ILA, the independent legal advice, was referred to yesterday in Sault Ste Marie. If I were to sign off, saying that I had done that due diligence piece—you referred to it as a commercial credit report; I'd refer to it as an independent financial advice. If those two requirements were put in here in a sort of regulation and they sign off on those—I agree with one of the previous presenters here that most people are so eager to cook that first pizza, they don't read anything. I honestly feel they get the buyout from the company they're departing from, \$200,000, and they rush right out and get that urge to be in business. I think there's some due diligence with that as opposed to me, the taxpayer, being somehow hooked into this, "Jeez, I got taken advantage of." You could say that happens every day at the casino or at the racetrack.

1400

I want to refer to something that you did reply to Mr Martin on. I'm quite sympathetic to the supply issues that we heard about yesterday. On some of those there should be some strengthening.

The other thing is the dispute mechanism, and I'm not convinced. In your report, under "Alternative dispute resolution (ADR)" on the second-last page, it says: "It is noteworthy that the discussion paper does not include a proposal for alternative dispute resolution. Nevertheless, the CFA recognizes ADR is an important conflict resolution mechanism, and one which can provide benefits to all players in the franchise sector." Do you think it should be included? You've also got some stuff here with respect to your own code of ethics.

Mr Cunningham: There are two issues with this. First of all, it's in our code of ethics, so obviously we encourage our members to use any other method than litigation. As I understand it, now it's even built into the civil court system, so mediation is available there. We've looked at the idea of having a different type of system than we have now, but the problem with mediation historically, both in the US and Canada, has been that there's still a stop-gap for using it, both in the case of not understanding it and the legal community not willing to participate in it. As a method of resolving disputes in franchising it can work; not in all cases, but it can in some. Again it plays to the issue that both parties must be willing to participate.

Mr Gilchrist: I have a couple of points that I wonder if you could elaborate on. Given that the CFA believes the commercial credit reports are valuable—and we've heard similar comments from other groups about getting independent legal advice—as part of your code of ethics or a pro forma prospectus, would you support the express statement by a franchisor that they "recommend," "strongly suggest"—words to that effect—that before proceeding with the application the prospective franchisee get both independent legal advice and obtain a commercial credit report?

Mr Cunningham: It's currently in.

Mr Gilchrist: Both of those?

Mr Cunningham: It is in our code of ethics. We encourage them to encourage the prospective franchisee to get advice from professionals. In some cases, not all—and unfortunately not across the board—to protect themselves franchisors have put in this clause so that a franchisee would go and sign off that they've seen a lawyer, an accountant and so on.

Mr Gilchrist: Many isn't all. Forgive me; I was finishing up a phone call at the start of your presentation, trying to listen at the back of the room. Is the code of ethics applied scrupulously? Can you get close? Can you say, "I chose other wording," or do you have some kind of review that you would go through and check off a list, and in this case if they did not have that as part of their prospectus, what would the repercussions be?

Mr Cunningham: If we have a complaint from a franchisee saying that they were not abiding by any part

of our code, we have a complaint procedure which we put into place and review it. The only decision we can make, the only option we have as a trade association, is to rescind their membership.

Mr Gilchrist: That doesn't sound like too onerous a penalty.

Mr Cunningham: In fact it does have quite a bit of effect to it because we own the trade shows, the directories and a lot of the marketing tools they have, and they can't be in those. If they are in the business of selling franchises and they do not belong to the association any longer, they can't participate in those vehicles.

Mr Gilchrist: Forgive me, I may be too picky in my interpretation of your language. You said "if they weren't following any of the terms." Does that mean "any one of," or the only time you would get mad is if they didn't follow—

Mr Cunningham: Any one of.

Mr Gilchrist: OK, that's different.

The second is the right to associate. We can say you have the right to associate. If there's nothing expressly provided for, I guess the franchisor could say, "Sure, they have the right to associate and I have the right to harass." What should we explicitly be stating are the consequences of saying that we allow a right of association? How far should we go down the road in the regulations to say, "There will be extraordinary repercussions if you do any of the following things," or should we be silent on that?

Mr Cunningham: It would be unfair for me to answer that at this point because it was never discussed at the Franchise Sector Working Team. For me to answer that on my own, and not having had time to consider it, I don't think I'd be giving justification to the answer.

Mr Gilchrist: I appreciate your candour, but does that mean they embraced the concept but didn't talk about any of the consequences of putting that clause in there? It was my understanding that right to associate was part of the approval.

Mr Cunningham: That's right. It was part of the approval.

Mr Gilchrist: But no one discussed what that meant.

Mr Cunningham: The focus at the time in those meetings, for whatever reason, was what would happen if you did not, the consequences for not disclosing properly, or at all.

Mr Gilchrist: Again, I don't mean those questions to sound harsh. You and we have heard over the last couple of days that disclosure seems to be the key. I must admit that my bias is giving people as much information up front. I think part and parcel of that is saying, in a clause that says you have the right to associate, what that means.

I would encourage you, if in fact it hasn't been discussed. Recognizing that the next step for this committee will be at some point after April 3, we've got a bit of time. If it's possible to seek counsel from any of your colleagues on that subject, I'd be grateful and would welcome your input.

Mr Cunningham: Of course.

Mr Patten: Thank you for your presentation. I haven't heard all of the presentations in the different locales, but I'm intrigued by this and the role of your association. I asked a question this morning about the need for a better business bureau, perhaps the model that you have here in that it can have some clout in the sense that it is used as a cornerstone for people to say: "Has this franchise been a member? Are they a member? If they were a member, have they had any complaints against them?" If somebody phoned up and there were complaints against a particular franchise, would you be free to disclose, not necessarily the particular—first of all, would you say, "Yes, there were four complaints in the last two years with such and such a company"?"

Mr Cunningham: We wouldn't disclose the background on any of the complaints but we would probably say their membership was in review. The reason for that is there are sometimes cases where a franchisee will phone in or file a complaint which has no basis to it. To give out details of such a thing when we haven't been able to fully investigate it wouldn't be fair to either party.

Mr Patten: Have you taken action to revoke a membership?

Mr Cunningham: Yes, we have.

Mr Patten: So someone would be able to know that?

Mr Cunningham: Yes.

Mr Patten: Good.

Along the lines of Mr Gilchrist, but not necessarily on the disclosure issue, which seems to be almost unanimously agreed to, what I've heard is, "Well, it's very difficult to get into the relationship between the franchisor and the franchisee." However, as time goes on there seems to be significant representation that says the franchisee continues to get squeezed somewhat. What's your experience and observation? Is that a general pattern? Does it vary with poor business practice and from business to business, or is there a pattern there?

Mr Cunningham: This is where the problem with statistics is. When we talked about supply issues, what might be a supply problem for grocery stores couldn't possibly apply for hamburger stores. When you talk about, "Where are the problems, are they in certain sectors and not in others?" you might say that in the food business, for example, territories become more condensed and are becoming more of a problem for them than they are for people who are working in home-based businesses.

The problem with dealing with an industry, if you can call it that, in so many sectors of the economy, and dealing with everything from a \$20,000 to a \$10-million investment, without proper statistics is that it puts us all in a situation where we're groping for answers with nothing to base them on.

In answering your question as best I can, I don't see any one problem that goes across all the lines of franchising other than the lack of consistent information for a potential franchisee before they buy, and this answers that.

1410

Mr Patten: My last question: You do periodic checks with franchisors and franchisees. If you uncover something, what do you do with that? Let's say no one has initiated a complaint to your association. However, in doing surveys of satisfaction you discover certain information. Do you take that back to your executive?

Mr Cunningham: It goes back to a membership review committee and they would make recommendations. In some cases we go back to the franchisor. I call the president of the company personally and say, "You've got these problems, fix them," or in some cases we would terminate their membership.

Mr Martin: I'm following up on the question that Richard asked a few minutes ago in terms of who you've actually kicked out of the association. I'm led to believe that, in fact, you've only revoked the membership of one and that was Pizza Pizza. Is that correct?

Mr Cunningham: I'm not at liberty to say, I believe. That would be privileged information of the association and I don't think it's appropriate to make any of that public here.

Mr Martin: You're not going to give me any numbers even?

Mr Cunningham: No.

Mr Martin: Then just to query as to the membership in your group and who you speak for, I'm led to believe that you have 220 out of about 1,300 franchise systems in the country. Is that correct?

Mr Cunningham: I don't what the date of that paper is, but our franchise member list is just over 300 right now because some of our member companies, like CARA, for example, would have eight brand names.

Mr Martin: And 80 of your members are lawyers, accountants or consultants?

Mr Cunningham: Correct.

Mr Martin: Also there are some big systems—and we heard from one of them today—that don't belong to your association. Do you have any auto dealers?

Mr Cunningham: No.

Mr Martin: Do you have any food stores?

Mr Cunningham: Yes.

Mr Martin: How many?

Mr Cunningham: One chain.

Mr Martin: Petroleum stations?

Mr Cunningham: Yes, Petrocan.

Mr Martin: What about hotels and motels?

Mr Cunningham: Yes, a number of them.

Mr Martin: You made a statement earlier about the information I shared with the committee that the perception out there is that there's lower risk by going into a franchise than the independent small business route. I have a study that suggests that's not the case, that the incidence of failure in franchising is greater than in going the independent route.

Mr Cunningham: I don't know your study so I can't comment on it.

Mr Martin: It's a study called Survival Patterns among Franchisee and Nonfranchise Firms Started in

1986 and 1987. I can give you a copy of the report. It was reviewed by Ms Susan Swift from our legislative research branch, and it's actually quite interesting. It has a number of findings that I think maybe your association might find worth looking at because it challenges very seriously the contention—and I suggest it's something that needs to be perhaps looked into further. If we're offering franchising in the country as a more secure way to get into business, particularly in an environment where there are a lot of people who are being restructured and walking around with severance packages looking for someplace to invest them and they are thinking that franchising is a bit more risk-free than actually setting up an independent business, then we may be sending them down a road that will result in stories such as the ones we've heard over the last two or three days here.

Mr Cunningham: Can I respond to that?

The Vice-Chair: Go ahead, sir. We're just about out of time here now.

Mr Cunningham: Even if these statistics are out there, and as people are being told that franchises are more successful than non-franchises, the disclosure is going to give them the information and the ability to contact people in the system. If they call up XYZ system and talk to 10 of the franchisees and they say, "I'm not allowed to associate," "I'm not making any money," "I've been in this business five years and I've lost money," or "I'm not in the system any more because I lost my life savings," I think that in itself is going to tell those people, regardless of what any statistics are, not to buy.

Mr Martin: The problem is, though, that a lot of the people that they should actually talk to have signed confidentiality agreements and they can't talk.

Mr Cunningham: They wouldn't be able to do that, though, with this disclosure legislation.

The Vice-Chair: Richard, thank you so much for your time today and for the presentation you left with us.

NORMAND TREMBLAY

The Vice-Chair: We'll now go to Mr Normand Tremblay. Mr Tremblay, we've allotted you 20 minutes, and that includes the time for some questions.

Mr Normand Tremblay: Good afternoon, everyone.

My name is Normand Tremblay. I am a former franchisee of the Loeb grocery chain. I left the business about three and a half years ago following a dispute with our franchisor. At the time, Loeb was owned and controlled by the Provigo corporation in Montreal. Today, as you probably all know, it is owned and operated by the Loblaw's corporation.

The store I had was the Loeb St Laurent on St Laurent Boulevard in Gloucester, which is now part of Ottawa.

My reason for being here today is to offer my opinion on the proposed Franchise Disclosure Act, Bill 33, based on my personal experience in a franchisor/franchisee relationship that went wrong.

The end result of the dispute was that myself and approximately 18 other franchisees were bought out by the franchisor as part of a settlement agreement that was reached following an extensive legal battle. Part of the settlement also stated that, at the request of the franchisor, all franchisees were prevented from discussing any details about the dispute. The only comment permitted was to say that "our differences were settled on an amicable basis." So I have to be careful as to what I tell you today on the basis of what I can say is a gag order following the settlement.

The only reasons we were able to secure an out-of-court settlement were that, first, there were 21 of us who had joined forces to fight for our rights and to cover the legal expenses. Second, we had extremely competent attorneys who also sincerely believed in our cause. Third, our customers, the public, the media, local politicians as well as many provincial politicians were all on our side. Fourth, our franchisor eventually realized that it had more to lose than to gain by continuing the legal battle, from both a financial and a public opinion perspective.

During our fight with our franchisor, we also lobbied provincial politicians very hard for some form of legislation to regulate the franchisor/franchisee relationship. Although we knew at the time that very little could be done in time to help our own situation, our primary goal was trying to make sure that what was happening to us would not happen to other franchisees in the future; that the kind of misrepresentation and bad faith that we were battling would one day be prevented by having franchise legislation that would outlaw such an abusive process in the franchisor/franchisee relationship.

The things that we were looking for in the legislation were full disclosure of information, good-faith bargaining, dispute resolution, and some protection when it came time to renew our franchise agreement.

1420

What the proposed Bill 33 is currently offering is the right to associate; full disclosure; a rescinding right for the franchisee; and finally, damage for loss due to misrepresentation in disclosure documents.

Although the proposed Bill 33 is a step, in my opinion, in the right direction in trying to prevent misuse and abuse from franchisors, I personally believe that it falls short on key issues that always surface in a franchisor/franchisee relationship. Let me try to cover some of them here today.

First, the right to associate: The right to associate was never an issue in our own dispute with our franchisor. What was the issue rather was the franchisor's steadfast refusal to (a) recognize our association as an established entity and (b) hear from or deal with our association or its duly elected representatives.

Giving the right to associate is meaningless without providing as well the right of the association to represent the interests of its members, the franchisees, before the franchisor. Giving only the right to associate is like giving employees of any organization only the right to form a union, but not giving that union the right to the

bargaining process. It is also as useless as giving someone a brand new car with no engine; it looks great but you cannot take it anywhere. It is only good for lamenting in it, just like the association that we had, with no right to the bargaining or negotiation process. We had an association, but our franchisor refused to hear from the association, refused to hear from its representatives, even refused to acknowledge it. They never opposed the fact that we had an association, but the association was meaningless.

Second, disclosure documentation: This is a laudable effort at trying to make sure that the franchisor puts all its cards on the table before the franchisee enters into the franchise agreement. This also means, however, that franchise agreement documents will go from being two inches thick to four inches thick from now on, and that instead of one lawyer required to advise the potential franchisee, you will now need a battery of attorneys to make sure that all the i's are dotted and that the t's are crossed, plus you're going to need a battery of accountants to make sure that everything that is being said in the document is valid for the franchisee.

Third, a rescinding right: Although I am not a legal scholar, I believe that, should one party fail to deliver the information required by that contract or should such information be different from what was previously agreed upon, there already exist legal alternatives to rescind such a contract. As such, Bill 33 does not seem to offer additional protection or add value in this regard.

Rather than including the right to rescind, Bill 33 should address the right to renew a franchise agreement and provide some form of protection to the franchisee when the time comes to renew the franchise agreement. More specifically, the following issues need to be addressed in one form or another.

Option to renew and term or duration of renewal: An initial franchise agreement must address a renewal process that recognizes that the franchisee is entering into a long-term business partnership whose financial success often takes more than one franchise agreement term. There has to be some type of protection to prevent the franchisor from discarding a franchisee at the end of his or her first term, especially after the franchisee has worked so hard to build the business and also before he or she has had a chance to make a profit or build equity in that business. Often we do see that the franchisors are enlisting new franchisees and, as they become profitable or before they have a chance to make money, then they discard the franchisee at the end of the first term. There is no protection and no guarantee that they will be renewed for another period of time.

Renewal condition: There must be some protection from the franchisor making significant material change to the original agreement at the time of renewal, especially when those changes are made in an effort to get rid of the franchisee through the imposition of a financial burden such as increasing the amount of advertising fee, the percentage rent, the sign rental, the accounting fee or the franchise fee that the franchisee has to pay the franchisor,

or by making significant changes to the franchise program that would preclude the franchisee from a reasonable expectation of making a profit in the future. From our own experience within our franchisor organization, we saw time and time again where the franchisor, before agreeing to renew the franchise agreement, imposed major expenditures on the franchisee so that even if he was renewed for another four or five years, his chance of making a profit at the end of those four or five years was nil. There has to be some kind of protection that there will not be any significant material changes in a renewal process.

The next item is goodwill. The franchise arrangement is a business partnership agreement where both parties play a key role in the success of the venture—both parties, not just one. However, most franchisors claim that the goodwill associated with a franchise operation is their doing and theirs alone. This belief cannot be further from the truth. The reason for this claim is that franchisors historically have refused to concede that the success of the business had anything to do with the franchisee's efforts, his or her dedication, the family commitment; hence, no recognition at all of the goodwill improvement the franchisee has brought to the franchise business.

Franchisors firmly believe that their name or sign alone is responsible for the business's success, which is not entirely true. There has to be a way to force franchisors to recognize the efforts of the franchisee who has successfully launched a new franchise location or promoted an existing location. Imposing some form of requirement for franchisors to recognize the goodwill contribution of the franchisee would achieve that.

The next item I want to speak about is risk and reward ratio. Franchisors have often claimed that the franchisee has made a minimal financial investment in the business and therefore bears very little risk compared to the franchisor. However, from a franchisee's perspective, this minimal investment may represent everything he or she has worked for all his or her life. As such, the franchisee's contribution to the venture is probably much greater than whatever investment the franchisor may have made, and the size of the amount at risk bears a much greater significance for the franchisee than for the franchisor. Furthermore, if the franchise location fails for whatever reason, the franchisor's representative, unlike the franchisee, is not suddenly out of work and does not have to rebuild his or her life.

The next item I'd like to speak about is acting as a prudent business person. No franchise agreement or franchisor should be allowed to force franchise program changes, either during the course of the existing agreement or as a new requirement at the time of renewal, that would prevent the franchisee from acting as a prudent business person. What I refer to here are things such as the franchisor imposing financially unjustifiable renovation or equipment changes on the franchisee, and changes that negatively affect the original profit potential structure of the franchise business, such as increasing rents or

various fees and the like or a reduction in gross profit margins to promote sales for the franchisor, often at the expense of the franchisee.

Good-faith bargaining—as I walked in earlier, I heard about good-faith bargaining. There has to be a provision in Bill 33 to enforce the requirement for franchisors to deal in good faith with franchisees, both during the existing term and at the time of renewal of the franchise agreement. The franchisor, with the size of its organization, its bag of experts and its financial strength behind it, is really in a position of power over the franchisee. There has to be something in the legislation to bring the negotiations and bargaining process to a level playing field. Mandating good-faith bargaining would certainly help achieve this.

Dispute resolution: When things go sour and the relationship appears to be failing, there has to be a reasonable recourse that the franchisee can seek in order to resolve the dispute, outside of an expensive and often unaffordable court battle. Bill 33 must offer this kind of protection, otherwise the franchisee has almost no chance of having his or her side of the story ever heard. Litigation between a single franchisee and a franchisor is rarely a fair playing field due to the uneven amount of resources, time and funding each side can afford to throw into the battle. Mediation or arbitration certainly are better dispute resolution alternatives for a franchisee than litigation. However, franchisors are well aware of that, and they know their chances of success are better with litigation since they have the people, the time and the money that the franchisee seldom has.

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In summary, the proposed legislation is a step in the right direction, but unfortunately it appears to fall very short of addressing the kinds of problems and issues faced on a day-to-day basis by franchisees across Ontario. It certainly would not have helped the Loeb franchisees or myself to resolve our differences with our franchisor, or prevented our franchisor from pursuing and promoting its personal interests and objectives at the expense of the franchisees.

If the intention of Bill 33 is to introduce “fair dealing between parties to franchise agreements,” then it must be broadened to include the issues I have just discussed. Franchisees need protection from abusive franchisors. Such protection can be provided by addressing:

The right of the franchisee association to bargain and negotiate with the franchisor on behalf of its members;

The right of a franchisee to renew the franchise agreement with equal or better terms than the original one;

The right of a franchisee to have a reasonable expectation of profit provided he or she acts as a prudent business person;

The right of a franchisee to be allowed to act as a prudent business person in the business development and operation of his or her franchise operation;

The right of a franchisee to be treated as a business partner and investor rather than as a subservient employee whose termination can be justified provided the franchisor has respected the Employment Standards Act;

The right of a franchisee to claim goodwill for his or her contribution to the success of his or her franchise business;

The right of a franchisee to expect a good-faith relationship with the franchisor, especially when it comes time to discuss renewal and the future business prospects of the franchise venture;

The right of a franchisee to participate equally in the short- and long-term business development of his or her franchise operation as any prudent business person should be allowed to do and is obligated to do as well;

Lastly, the right of a franchisee to seek an alternative to an expensive and, most of the time, unaffordable legal battle with the franchisor through some form of dispute resolution that is fair and affordable to both parties.

In conclusion, I want to thank you for giving me the opportunity to express my views on the proposed legislation, Bill 33.

I am sure many franchisors will come and tell you there is no need for such legislation and that the industry should be allowed to regulate itself. Unfortunately, franchisors of all stripes, with very few exceptions, have demonstrated time and time again that they have absolutely no interest in the business success or financial well-being of their franchisees. If one does not meet their expectation or challenges their authority, they simply get rid of him or her through whatever means they have at their disposal. When there is a dispute, the cards are always stacked in favour of the franchisor.

The government has an obligation to protect citizens from being subjected to misuse and abuse by unscrupulous businesses and corporations, in the very same way it protects the environment or guarantees health care and social security to those who need it.

Franchisees in Ontario need protection from irresponsible franchisors. Let us hope that Bill 33 will deliver the kind of protection it was intended to deliver. My biggest fear is that if it passes without the changes discussed above, the franchisors will claim they have been dealt a serious blow and yet will still be allowed to do as they wish with their franchisees, provided they disclose their intentions to do so at least once in the original franchise agreement. Thank you very much.

The Vice-Chair: Thank you very much, Mr Tremblay. We don't have any time for questions right now because you used up the 20 minutes, but could we get a copy of your presentation?

Mr Tremblay: By all means. I wish I could have made it faster to take some of your questions, but I had so much I wanted you to know.

The Vice-Chair: OK. Thank you very much.

Mr Patten: Mr Chair, might I suggest that you notify each one, that you give them a five-minute notice. Some may not be aware that their time is being fully used.

The Vice-Chair: OK, I'll do that from now on.

VIJAY KAWATRA

The Vice-Chair: Mr Kawatra is the next person in our presentations here. Mr Kawatra, you have a 20-minute

time allocation, and I'm going to tell you at five minutes if you want us to ask you some questions.

Mr Vijay Kawatra: First of all, I would like to inform you that the notice I was given was really not ample for me to prepare lengthy commentary like the person who just left has made, although I tend to concur with many of the observations the previous speaker has made.

Let me first inform you that I am honoured to be present here to talk to you today. I would like to thank you for inviting me and giving me this opportunity. My special thanks go to Claudette Boyer for making it possible for me to come and express to you my concerns.

It's an important subject and I have a lot to say on it. Given the time, however, I would like to present only a summary of some of my thoughts now and leave more comprehensive discussions for later, if you so desire.

May I point out that although I am speaking as a former franchisee of a system, my thoughts are based on much wider knowledge and observations than just my personal experiences with one system. I have held discussions with other franchisees from other systems and other regions. Also, I have read the contemporary literature on the subject. I operated a franchise myself for about seven years.

To summarize some of my principal thoughts, I've just jotted down some ideas. They are not really all that I would like to talk about, but just to express to you some of the things that I have on my mind.

First of all, the proposed legislation is a very good start and is urgently needed to help Ontario's franchising industry grow in an orderly fashion. I would like to take the opportunity to commend you for the initiative you have taken, but my feeling is that the proposed legislation in its present form will do little to protect current or future franchisees who are the main victims of the industry. For example, the legislation is not directed to post-sale agreement activities, the area where 90% of the damage is done and where the main victim is the franchisee and not the franchisor. The proposed legislation intends to deal with pre-sale disclosures. It is important, but it will fall very much short of addressing the issues at hand in any significant way.

Also, it does not consider some very crucial areas of concern in the field of fairness, transparency and justice. The industry is riddled with myths like "90% success rate" and "recession-proof business opportunities." However, no conclusive data or empirical evidence is available to support these kinds of promotional and seductive claims. Often US industrial observations are circulated to attract franchisees in Ontario without Canadian references, and you probably know that the often-quoted US data has not been confirmed yet.

It might come as a surprise to you that a whole lot of abuse is taking place in some segments of the Ontario franchise industry. I think something must be done to address it, because the situation, to my knowledge, is very serious and it affects a large number of people. It's having an impact not only on their financial well-being

but also the families are affected because of the financial difficulties that these franchising businesses are bringing about to those families.

I don't have the details in writing. They are of course in my mind, and I have several examples I could cite if need be. I would be prepared to talk to people in confidence if they want to discuss specific examples where I know, from my personal experience and the experiences of other people in Ontario, that they have not been dealt with fairly, and it is mostly the franchisor that derives the benefits of the transaction, not only at the time of consummating the sale but even throughout the entire life of the franchising agreement. There are many, many shortcomings in the present system, and I'm kind of surprised that we have taken so long to actually initiate the legislation to govern a segment which I believe is very important to Ontario.

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A whole lot of information is required before we make any sensible remarks, and I think it's been stated in your own proposed legislation that there is a lot of research required to be done. I'm not sure how much work has been done yet. But to cap my information to you, I would say that it is a good start. It's urgently needed. It does very little in its present form, and even in the case of pre-sale disclosures I can think of some points that can enhance its application and utility. However, it does not really address more than 10% of the problems associated with the franchising industry, because I would say 90% of the industrial problems actually take place in the post-sale area rather than the pre-sale area.

Those are all my observations at this point in time, and I'll be very happy to discuss it with you should you like to do that.

The Vice-Chair: OK, thank you very much, Mr Kawatra. The questioning this time starts with the PC, then Liberal and NDP.

Mr O'Toole: Thank you very much, Mr Kawatra. I have just a couple of questions. I guess you had short notice, but if you have written comments you can still submit them to the committee. That would be accepted.

What franchise did you operate and for how long? Seven years, you said?

Mr Kawatra: I operated a franchise in the fast-food business, and I'm not sure if I would like to disclose the name at this point in time.

Mr O'Toole: OK, that's fine. You said it's a good start. I'm just wondering, do you believe that the disclosure portion, which is perhaps the strongest portion of it, as we have not got a template for what that disclosure would require, could deal with some of the escalating pass-through clauses or with respect to provisions to address additional costs or royalties? You're talking about a post-sale agreement. I'd love to have one. In fact, I won't have one until the year 2003, the next time I get to review my franchise for my riding. Nothing's for sure, you know. I was going to say, life is full of—

The Vice-Chair: You call it a franchise, do you?

Mr O'Toole: Well, I'm trying to make it into one.

In a more serious tone though, what I mean is nothing is forever, not even life, unfortunately. The thing is, if I knew I was going to make on a certain stock I'd retire now and just get it all. It's interesting. I really don't understand how that could ever be defended. Do you understand? This is what exists and then I suspect if there's some association that says, "This association will review all cost increases through royalties, whatever," that would be a way to, as a collective, address it. Do you understand what I'm saying?

Mr Kawatra: Sort of.

Mr O'Toole: If we attempt in this legislation to make sure that people live happily ever after, sort of like Goldilocks, that ain't happening.

Mr Kawatra: No.

Mr O'Toole: It wouldn't matter. We heard one person here today read off a litany of prescribed rights that people would have, while we just move to a two-box contract. Do you understand? So I suspect that's what I'm saying. We should be realistic here in disclosure, and if you have something to add to that from real-life experience that would address in some cases after-sale, pass-through costs, I'd be happy to make sure that it's fair in the ultimate intent of the legislation here.

Mr Kawatra: I may have some points, actually, on pre-sale disclosure that, to me, would help. It's not going to answer everything you want to answer; however, I think I could come up with some specific issues that you would like to consider as part of the pre-sale thing. That's what I can say at this point in time.

Mr Patten: Welcome. I have two questions you might want to respond to that relate somewhat to the gentleman who spoke before you, who is living under a gag order, he tells us. But if I recall the situation in those circumstances—and you may have a comment—some of the franchisees were in competition with franchises that were owned centrally by the company, and they'd have a sale and put the squeeze on and the others weren't a part of this particular promotion, for example, or they'd add other franchises nearby that would eat into your marketplace without any particular agreement around what your market really is. Do you have any comments on both those things?

Mr Kawatra: From what I remember, I think they are both plausible and I have seen that happen. There are other issues you might like to consider in the same bag, where you find that some of the advantages which rightfully should go to the franchisee as part of the system are actually siphoned out to the franchisor; for example, in relocation. It's not unusual. I've seen many franchisees relocated over a period of time, between five to 10 years. That opens up a whole lot of opportunities for franchisors to actually carve out the profitable area in terms of location and place or re-place the existing franchisee in a location which is not preferred.

On an associated topic, if I may, I would like to point out that the issue of transparency that I mentioned earlier could be associated here, and that is when the landlord requests a relocation. Some landlords are not too bad, in

the sense that they consider the hardship it will cause to the franchisee and the potential sales changes that might result from it, and within limits they offer some compensation, monetary and otherwise, and I have seen franchisors reap those benefits directed to them and not pass them on to the franchisee. Those are some issues that you might like to consider. Others are associated with the suppliers, how often they change suppliers. One other thing—I don't know if it has been brought to your attention—is repossession of the store. The same store is repossessed by the franchisor. Time and again they kick the franchisees out and they sell the same store a few times.

Mrs Boyer: Thank you, Vijay, for your presentation. I know it was short notice, but at least you got a sense of being heard.

From the very beginning you said that Bill 33 was a very good start, that it was a bill that was urgently needed. But then I heard you saying: "Are we really ready for it? Is it strong enough? Is it ready to go?" Why would you say that? Do you find that in this form right now the bill is not ready to be voted on? That's exactly why we are having these hearings, so that we can take up the recommendations that different presenters have given us. We hope you will be able to give us the recommendations you've talked about. You've talked about transparency and you've also talked about fairness. In this present form, do you think it's ready to go on as a bill?

Mr Kawatra: I would like to see a few additions to that. One is some kind of organization of structure or infrastructure. It might be the Canadian Franchise Association or some body that is an independent body of the franchisors and franchisees that has at least an observation role if not a judicial or mediation role. I have seen statistics on how many cases go to the courts from among the industry and franchisors. To my knowledge there are several that don't go to court, and they are settled not to their mutual advantage but usually to the unilateral advantage of the franchisor. There is no recourse available to franchisees for many reasons.

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One, you likely may have noticed—I don't know if there has been any study done on the franchisees' profile—many of them are immigrants, like myself. They are not aware and not strong enough to exercise their legal rights. Some franchisors have actually gained, if you like, quasi-judiciary positions vis-à-vis their franchisees and they've terrorized them. I'm sorry to say that. I'm not exaggerating. I've seen situations where that continues to go on, and the franchisees, because they have invested their life savings, even though they're incurring losses and borrowing and begging money from other people just to hope that at some time they will recover, many times they don't. They keep the business going simply because of the fear of the franchisor and the fear of losing everything they ever owned.

What I am trying to tell you is that there is a definite need for another party to be present, at least. I'm not

saying that we want to move from free market conditions into some highly regulated industry, though many industries in Canada are regulated and this is not. To me, it's a big surprise.

However, for the bill to go ahead to my liking, I would like to see some kind of body that has an independent point of view of reporting to whomever it wants to, and observes and takes confidential information and treats that so and is available for consultation. If you can incorporate something like that, that will go a long way, in my judgment.

Mrs Boyer: Thank you.

Mr Martin: I certainly hear loud and clear what you're saying, that we need something after the contract is signed, by way of dispute resolution mechanism that we can go to, that's third-party, that won't cost an arm and a leg for lawyers' fees and all that kind of thing, that will resolve a whole lot of the issues that come up on a regular basis.

But that's not what I want to ask you about. I want to go back to some comments by my colleague Mr O'Toole on this issue of nothing lasts forever. We have a fundamental philosophic difference of opinion here. I believe there are some things, if we do them right and we're careful and we're respectful of each other, that could last forever—like my marriage; that's a contract that I signed. I hope he's not saying that won't last forever.

Mr Kawatra: I'm really glad to know that.

Mr Patten: Don't go there.

Mr Martin: I would think that when we make business relationships, investments, we think they will last forever; that when I build a home, it'll be there for me and I'll be able to pass it along to my children or sell it and have a retirement, that when I go into business and make an investment in a community, all things being equal, if conditions are relatively normal, it'll be a business that I will be able to work at and make a living at and perhaps pass on to my children. But what we're finding more and more in Ontario—I was brought into this in my own community by about three families I knew personally who lost all that. They had worked very hard over a long period of time to build up their skill and their understanding and knowledge, they made the investment, they were working hard and overnight the company that owned them changed and the sand shifted.

What I've heard you and so many others say over the last two or three days is, "Put something in place that at least gives us a fighting chance, that keeps going what we've put our time and energy into so that we get something out of it," so that it isn't always the big guy walking away with the bone.

Somebody mentioned the other day that it was a dog-eat-dog world out there. But in this instance, where franchising is concerned, it's more like a dog-eat-goldfish reality, and that's what I'm beginning to hear and see, so I'll be supporting very much your call for a dispute resolution mechanism.

Perhaps you want to talk a little bit about this philosophic "nothing lasts forever" comment.

Mr Kawatra: First of all, I am delighted to hear what you just said: one, the perceived intention of something lasting. I think philosophically we should not enter into everything in our lives just from the hope that it's going to last only today, because that tells a lot about us as a society and the value system we place in our transactions.

Having said that, if you ask the franchisee as a party to this negotiation, to my knowledge, they always come forward with this intention and hope. Believe me, most of them have put every penny they've earned over the last 30 years into this thing, so they're not going to accept anything short of having this last for another 30 years, if not more. So your point is well taken and I encourage that.

In business, of course, the risks are there in the globalization of markets, and now centralization and standardization, and many other things are acting upon us, which keeps us at the edge. They want new technology, new skill sets and so on, and many of the people in the franchisee group, unfortunately, are not necessarily on the technology edge. The pressure may be—it's not coming out as clearly but I think that's happening underneath, the standardization. In other words, the franchisor would like to have control over the supply system; they would like to have control over advertising; they would like to have control over every segment of the thing. The franchisee doesn't have any control at all.

From many of these points of view, I think to some extent we should try to encourage some kind of legislative or institutional framework whereby the length of the transaction can last longer than just two or three years, certainly five to 10 years, which is the minimum for most franchisees to recover the return on their investment to compensate for all the money and the sweat equity they have put in place. That's one thing.

The other thing, if you want, I can discuss with you at some point in time. Suffice it to say that I'm really glad you're here and you're listening to people like myself. I hope, before you actually announce the legislation, that you give serious thought to some of the things you have heard here today and in other proceedings on the topic.

The Vice-Chair: Thank you very much, Mr Kawatra. We're over time now. I had another questioner written down here but I'll get him later. We appreciate your time.

MARCO D'ANGELO

The Vice-Chair: Our next presentation is from Mr D'Angelo. Mr D'Angelo, we have about 20 minutes.

Mr Marco D'Angelo: Good afternoon, Chair and committee members. I'm here today to discuss some of my concerns with Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors.

Franchise business accounts for billions of dollars of Canadian retail sales annually, something in the neighbourhood of 40 cents of every retail dollar spent. I am here as a concerned citizen who is a former employee of

a franchised store, and also as someone who knows many franchisees who are not able to speak here for fear of legal reprisals from their franchisor.

I have lived in the west end of the community of Ottawa for a number of years now and I must say that in that time many businesses have opened and closed their doors. I have known several families who spent years saving a little money each paycheque so that one day they could leave their jobs and be their own boss. What happens to many of these families is that they are presented by franchisors with something called a turnkey operation, which I am sure the committee has heard about already. These turnkey operations are presented as an "instant, just add water" type of business. They are told that all they need to succeed is to simply work hard. Unfortunately for many of these working families, it is far more difficult to achieve that.

The franchisees often sign contracts hundreds of pages in length. This is how long a franchise contract can be. Can you imagine being presented with a contract like this for a small business? It's impossible to expect franchisees to read, let alone comprehend, all of the details and fine print in this contract. They often do not question many of the details in the agreement because they trust that the franchisor wants them to succeed. The franchisors often say: "We want you to do well. If you don't do well, we won't do well. We want you to operate that business. We wouldn't put you in a position where you would fail because if you fail, we too will fail."

After a few years of tough times most small businesses do ultimately fail, not because of a lack of work or commitment, but because they are forced out by their franchisor. There are many ways that franchisees are forced out of their businesses. The first reason for failure occurs if the franchisee does not understand the type of franchisor he or she is taking on.

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Bill 33 calls on franchisors to provide their clients with a disclosure document that contains the company's financial statements. Where Bill 33 falls short is where it fails to recognize that there is more to a franchisor than their financial statements. Bill 33 should include details pertaining to the business experience of the franchisor's management personnel, litigation history, and insolvency records if applicable. Franchisees have a right to know what they will be dealing with before they sign on the dotted line. They have a right to know the rate of failure or success of the franchise. They have a right to know if nearby franchises are thriving or barely surviving. For the franchisee, the disclosure of this information can protect their family from potentially losing their life savings.

In order to visualize the kind of relationship that I'm describing, I've decided to personalize some of the examples. Throughout the presentation I'll be referring to a franchisee named Brenda who has entered into a contract with a grocery franchisor named FoodMart. After Brenda's family decides to agree to act as a franchisee, their problems begin to become apparent. In most franchise agreements, there is usually a provision

for forced buying. Through forced buying, FoodMart is the exclusive supplier of all necessary products to Brenda's business. She now finds herself forced to purchase products from the franchisor which are marked up or can be of lower quality than products that are available locally.

This example was played out in a grocery store in my community. This grocery store wished to purchase produce from local growers after customers had lobbied the franchisee to do so. The franchisor threatened the franchisee with the loss of their franchise if they persisted in doing this, despite the franchisee finding a local producer who offered a better quality of produce at a lower price.

Bill 33 on the surface wants to promote fair dealings, but there is nothing fair about forcing franchisees to buy supplies at unnecessarily high prices. In my community, successful small businesses have helped to build a strong community. Bill 33 needs to offer an option to opt out of these purchasing deals so that franchises can support other local small businesses rather than allowing franchisors to continue to drain money out of our communities.

In my conversations with some franchisees where I live, I asked why they stayed in these agreements when they clearly did not benefit them. The answer was that the franchisor often uses equal parts of fear and intimidation to keep many franchisees in their system. Brenda's family, seeking an opportunity for success, has invested her savings, her RRSPs, and mortgaged her home in order to start up her FoodMart store. Franchisees, by virtue of investing most of their financial worth into their business, become tied to its success or failure. Franchisors use this dependence to achieve greater power over their franchisees. When faced with the prospect of losing her life savings or her home, Brenda will fear the actions of the larger, more powerful FoodMart organization. When she attempts to question the actions of FoodMart in areas such as increasing royalties, she will be reminded in no uncertain terms that FoodMart controls her store, not her.

When Brenda wants to inform other FoodMart franchisees of her situation, threats of legal action by FoodMart soon follow, thanks to confidentiality agreements that she was forced to sign prior to being awarded her franchise. These so-called gag orders act as legal muzzles over franchisees. Brenda is prevented from disclosing the misdeeds of FoodMart to other franchisees and, worse, cannot inform potential new franchisees who are about to sink their money into a FoodMart operation. The removal of these gag orders is something Bill 33 does not address.

Even worse, Bill 33 does not include regulated standards of conduct. Prohibiting the inclusion of gag orders in franchise contracts, termination of a franchise contract without cause, and allowance for the use of independent suppliers should be included in this bill. Simply putting the words "fair dealing" in the title of Bill 33 will not ensure that dealings between franchisees and franchisors will be any fairer than they are today.

If this committee wants to look for examples of how to incorporate substantive measures that would ensure fair dealings, they would need to look no further than Bill 35, a bill introduced by your colleague Tony Martin. Bill 35 outlines minimum standards of conduct and protects the rights of the franchisee. If the intent of Bill 33 is to protect franchises, then it should contain strong mechanisms for enforcement. While Bill 33 does extend the right of action to sue franchisors if they misrepresent themselves or do not allow franchisees to associate, the only means for the franchisee to enforce these provisions is to sue for damages. This sort of legal action is expensive. It can financially ruin the franchisee's business.

If Brenda, whose life savings and investment are at stake, refuses to accept FoodMart's conditions, she has a choice, for lack of a better word. She can walk away with nothing or, if she attempts civil legal action, she is faced with the prospect of walking away with less than nothing, that being the loss of her business and some huge legal bills.

Many franchisors have the means and are content to stall cases in the courts until the franchisee can no longer afford the cost of justice. In order to protect the over 5,000 franchisees who take civil action against their franchisor each year in Canada, an alternative form of arbitration needs to be proposed. The most accessible and equitable way to do this is through a dispute resolution process. Bill 33 is silent on this vital point. However, details on dispute resolution can be found in sections 28 and 29 of Bill 35.

That dispute resolution process establishes a mandatory process of mediation where both sides are able to express their differing opinions to an impartial mediator who will be able to provide constructive ideas for resolving the dispute. This forum would provide an affordable alternative to lengthy and expensive civil court proceedings.

An argument put forward against this is that the dispute resolution process would act as a layer of red tape, an imposition of bureaucracy on small business. Nothing could be further from the truth. This is about protecting and encouraging independent franchisees and improving their chances for success.

In order for any new law to have meaning, there needs to be a reward for compliance or a penalty for non-compliance. A contravention of Bill 33 is not considered an offence. To protect franchisees from potentially unscrupulous franchisors, I suggest that a breach of this act be a public offence. Positive examples of some measures of consequence can be found in sections 57 through 60 of Bill 35. Offences such as willful misrepresentation, interference in an investigation or selling pyramid schemes should be against the law. These sorts of offences deserve more than a civil judgment, because they are very serious.

Only the threat of heavy fines will dissuade franchisors from being able to financially afford ignoring this law. If we want to seriously consider protecting franchisees, we also need to consider enacting penalties that

will tell franchisors that taking advantage of working families and their life savings is not a civil action or a business tactic but a crime.

Some areas of concern that are not addressed in Bill 33 include the rights of employees of franchisees. Employees of franchises often find themselves in positions that fall woefully short in areas such as wages, benefits and job security. Today's minimum wage of \$6.85 an hour is lower than the minimum wages across the United States after the currency exchange. The extension of benefits, even to the very few who find themselves in full-time positions in a franchise, is rare. Franchisees often want to reduce employee turnover and attract better skilled workers. Unfortunately, because of the schemes of royalties and licensing fees, franchisees are being squeezed so tightly that even if they wanted to, they are unable to pay their workers a better wage.

In order for workers to be able to earn better hourly pay, laws governing the organization of employees need to be visited, and perhaps changes to help workers should be incorporated in this bill at a later date. Many franchisees that are forced into bankruptcy often have significant amounts of wages owing to their employees. The possibility of giving employees and local creditors priority over the franchisor should also be looked into as a possible amendment of Bill 33. Provisions forcing the franchisor to guarantee the payroll of franchisees that go under is another possibility.

In summary, the problem that franchisees face is having to deal with a very powerful franchisor. It's a case of small versus big. This bill has a real chance to provide serious changes to protect franchisees and allow them to be independent, as promised, and able to reinvest in their community. In my view, franchisees are in need of protection, which they don't have at the moment. As it stands, Bill 33 does not go far enough to provide that protection. Only going part way to assist small enterprises is a disappointment to small family businesses.

Please consider some of the ideas I have presented to you today, and hopefully bring forth some amendments that will truly assist franchises in a more meaningful way.

I want to thank the members of the committee for allowing me this time. I look forward to any questions you might have.

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The Vice-Chair: Thank you very much, Mr D'Angelo. The first questions will be from Claudette Boyer.

Mrs Boyer: Thank you for your presentation. I thought that was a different way of going at it with the scenario.

When you started, you said that Bill 33 is well intended and can offer franchisees the protection they need but fails to do so. Do I make out of that that what you say Bill 33 fails to do and should do is the amendments you would like us to potentially look over and bring around to have it more forceful?

Mr D'Angelo: I believe that Bill 33 is a good first step in helping to protect franchisees. I think it's very fortunate for this committee that there is another bill, Bill 35, which addresses many of the concerns I have. Perhaps some of the amendments to Bill 33 can be found in Bill 35, in some of the sections I outlined that pertain to dispute resolution and that sort of thing.

Mrs Boyer: Of course you know this is not our first day of hearings; this is our third day. You did bring up a lot of points that we were reminded of Monday and yesterday in Sault Ste Marie. You bring up the question of community involvement, and I have to let you know that this has been a point, especially with local businesses, that you could encourage. You talked about Bill 35, as far as amendments are concerned, and I think you've mentioned some of these. So yes, we will look into them. I thank you for your presentation.

Mr Martin: Thank you very much, Mr D'Angelo. I thought your presentation was quite thorough. I want to focus my questioning on a new perspective that you put on the table today. Yesterday in Sault Ste Marie we heard of the impact of some of the direction franchising is taking on local economies in the province and the ability of small producers to get their product on the store shelves so they can get it sold and consumers can have a choice.

Today you mentioned the impact of the changing world of franchising on employment. A lot of the service that is now delivered by franchises used to be locally owned, mom-and-pop operations that supported families and provided, in some instances, some full-time work that had fairly decent wages and was fairly stable. We note more and more, and we've heard from some of the people who came before us, that because of the diminishing margins, we now have a lot of part-time employment, and a lot of it, if not minimum wage, fairly close to it.

Are you suggesting that protection of the franchisee would go a distance to improving that circumstance?

Mr D'Angelo: Yes. What has been happening is that a lot of small businesses that are community-oriented and owner-operated, and that do provide some full-time jobs at decent wages, are often being replaced by larger, very corporate-oriented franchises that focus on paying their workers the lowest amount they can and investing not as much into their community as the local businesses sometimes do that are supported by the residents of the neighbourhoods they serve.

Getting back to my point that successful small businesses build successful communities, being able to pay a worker a decent wage ensures that the person who works for you can afford to buy the things you sell in your store and the things that are sold in other stores. It serves the community better to have workers who are well paid, who have job security and who can work full-time as opposed to some of the things offered by franchises, where it's part-time hours, casual work, minimum wage and that sort of thing.

Mr Martin: Just to follow up on a comment that was made by the previous speaker on the question of:

"Nothing is forever, so what are we worried about? You make an investment; you take the risk. Some win; some lose. That's life." We're also told that young people are OK with that. You're a young person in front of us today, making a case for franchising. What are your hopes and aspirations when you get out of school: To get into something that will be long term or to get into half a dozen things that may or may not be successful? What are your hopes and aspirations, and where do you think we're going in the world? This is a huge question, I guess. But in terms of long-term security, something you can count on—I think you know what I mean.

Mr D'Angelo: It's sort of a philosophical debate about franchises. It's interesting. Going back to the comment that nothing is forever, if you're someone who saved a bit from your paycheque for years and you invest in this business and you open it up, and because of the scheme set up by your franchisor you are forced into bankruptcy and you do lose your savings, that's something that is forever, unfortunately. The business may not be forever, but going bankrupt, losing your life savings, losing your home and your RRSPs is something that I think does last forever.

As someone before you today in this committee, someone potentially interested in one day having perhaps a franchise, I think that what this committee has is an opportunity to really do something to help small businesses thrive in this province. It's something that we need to look at. I hope some of the amendments that I presented ideas for are presented and hopefully passed into the bill.

Mr Gill: Thank you, Mr D'Angelo, for being here. I have a couple of questions. Actually, this is our third full day of hearings, and to be honest, you are the first one who is not related in any way to a franchisee or franchisor or somebody related to a law system or whatever. Just to let you know that you're the first one. Are you from Ottawa?

Mr D'Angelo: Yes.

Mr Gill: Are you related in any way to Brenda?

Mr D'Angelo: No.

Mr Gill: How did you hear that these hearings were being held?

Mr D'Angelo: I heard about these hearings as a business student. I'm interested in some of the things that go on in business law, and as someone who has worked for a franchise, I do know a franchise owner who indicated that there was a bill. I was referred, too, by your parliamentary channel that invited calls be made to the clerk of the committee, and the clerk did a lot in helping to get me here today and giving me the time to be here.

I find it interesting that you noted that I was the first person who wasn't related to a franchisor or a franchisee. That's sort of the position I took in coming here today, that is, what do I want to see as a person in the public for small business, because I know that small business plays a vital role in community building. That's what I'm

interested in, building a strong community in the west end of Ottawa, where I'm from.

Mr Gill: When did you know that Bill 35 was not being discussed? On the table was Bill 33. Where did this Bill 35 come from?

Mr D'Angelo: The Legislative Assembly of Ontario Web page that you have lists the bills that are currently on your order paper and Bill 33 is on that. It's listed alphabetically, "Franchises: Bill 33." Right under it was another bill called Bill 35 that was also about franchises. I had the opportunity to read both bills and what I found was that Bill 35 provides a stronger enforcement, a better idea for a dispute resolution process than some of the things that were offered in Bill 33. Bill 35 is definitely a stronger bill, and I hope you look into Bill 35 as perhaps a source for some amendments to Bill 33.

Mr Gill: You have some good points. In your submission where it says what Bill 33 fails to do, in fact, if you really dig deep into it, Bill 33, in the detailed disclosure agreement and the right to associate, once the regulations are made, will address all those issues. The only thing it will not address is the gag orders, to eliminate that. That's the contract you sign when you settle something. I don't think we can ever eliminate that, if you agree to sign something. I don't think we'll be able to legislate that. Do you want to comment on that?

Mr D'Angelo: I think you can legislate against using the gag order against someone to keep them from informing another franchisee about the misdeeds. I personally think that it's unconscionable to force someone to sign a contract before giving them a business, to say, "If we put you in a situation where you have to lose your savings and your home, you don't have recourse to speak to other potential franchisees who may be considering investing," and perhaps giving more information of your personal experience than your franchisor allows you. I don't believe it's the role of the franchisor to tell the franchisee what they can say and do.

1520

Mr Gill: These gag orders are not signed before getting into business; these are signed after dispute happens, after they get into some kind of settlement. I think you are incorrect in saying that these gag orders are imposed upon before signing a contract.

Mr Martin: Some are.

The Vice-Chair: We've had quite a bit of discussion on this. Mr D'Angelo, we really appreciate the time you've taken here in making your deposition and all the efforts you've put into your presentation.

CHARLES GIBSON

The Vice-Chair: The next presenter is Mr Charles Gibson. Mr Gibson, I understand that you may be willing to give up five minutes of your time so that we may ask Mr Tremblay some questions.

Mr Charles Gibson: Yes. Perhaps we can just see how it goes with me, and if there are five minutes left, I'd certainly like to have Mr Tremblay have the occasion.

The Vice-Chair: That's okay with the committee, so you've got 20 minutes.

Mr Gibson: I'm Charles Gibson. I'm a lawyer. I represented Mr Tremblay in his matter to which he referred during his presentation. I think I'm going to change my presentation from my original thoughts. Sitting here listening to the committee, it seems to me that it dovetails very well with what I was going to present, but I think I'll change the fashion.

We were talking today about whether or not something is for life. We've heard whether or not when someone signs a franchise agreement it should be something which is a pension plan and provides them something for life. I think that most persons would agree that it should not be a pension plan. However, what it should be is a fair chance for the contracting parties to have a commercially reasonable business relationship.

I think it's important to note that in the traditional franchisee-franchisor relationship, there's a real imbalance of power. You have the little guy and the big guy. Traditionally in law that's treated by way of a fiduciary duty. I don't think that in these circumstances in a commercial contract you necessarily have to have the law impose a fiduciary duty, but to be able to ensure that during the life of the commercial contract, which is what it is, both parties have a chance, if they work hard and if the competition doesn't beat them, to have a successful business.

What happens traditionally, in my experience—and I've represented a lot more people than the Loeb people. I've represented dozens of franchisees. I've also—don't tell anyone—represented some franchisors. Traditionally, what happens is that during the course of the relationship things evolve. In every franchise agreement I've seen that's been signed in the last 10 years, as it evolves it gives a discretion to the franchisor. The franchisor then exercises that discretion, whether it be for lowering or increasing of fees, whether it be for costs. Most franchise agreements call for the franchisees to purchase exclusively from the franchisor. They have to purchase, they have to pay the fees, etc. When one has an unfettered discretion in a commercial context, where does that put the person against whom that discretion is being exercised?

I'll draw back. I obviously have some confidentiality provisions from the Loeb incident, as well as that they're my clients who signed the gag orders. This is not just limited to Loeb, because I've represented many franchise situations. Traditionally what happens is: "Well, we've gone for five years. We've paid for the renovations. Now we're starting to make some money. Now let's exercise the discretion, either to increase the fees or the costs, or let's get some new renovations. Let's have them invest more money." Instead of allowing the individual to have a period where they don't have a heavy debt load etc and they can earn some money, they exercise their discretion.

In Bill 33 there's section 3, which deals with the duty to deal fairly. In my review of this section, in conjunction with section 2, I must admit I came to a surprising

conclusion. At least a tenable interpretation is that the fair dealing does not apply for contracts that existed prior to the introduction of this bill. I see at section 2, which deals with the application of the law, it states: "This act applies with respect to franchise agreements entered into on or after the coming into force of this section, with respect to" etc. I don't know if that is intentional, but in my opinion, if this franchise legislation is to have any validity, any power for those who are already in the franchisor-franchisee relationship—clearly section 3 says, "Every franchise agreement imposes on each party a duty of fair dealing in its performance and enforcement...." I respectfully suggest that should be changed to make it clear, so when you get lawyers like me reading it, it's clear that it does apply under those circumstances. That's as an aside. As a lawyer, I saw that and that flew to me.

But one must now look, in my opinion, at what happens during the commercial relationship when the discretion is being exercised. When it's being exercised, I respectfully submit to you that it should be done in a commercially reasonable fashion. I think that's the key. Nobody expects to invest money in a business and have a pension and have the government say: "OK, we're going to protect you. Nothing that happens is going to be your fault. You've got this free ride." However, when you have an imbalance of power I suggest that what has to happen is that there has to be something which keeps the more powerful party in line. This is a business. A good example is when you have a franchisor who has corporate stores and franchise stores. Traditionally, the franchisor is the wholesaler as well. So if they're the wholesaler and the retailer, they don't care where in the chain of sale the profit goes because it's going in the same pocket.

However, if you're a franchisor and you have franchisees, you have to look at whether or not that decision impacts on the front-line retail profitability. If all your decisions don't take that into account because two thirds of your stores are corporate stores, then what happens to the franchise stores? The franchise stores get squeezed. They make the money at the wholesale and they squeeze it at the retail.

If you have in Bill 33 a section which defines fair dealing—as it stands now the common law provides for fair dealing but it provides for unconscionable transactions. In other words, if it's an unconscionable transaction, then the fair dealing comes into play. However, unconscionable transactions for general purposes means fraud. It's very, very difficult to prove in a civil context. So if you have this fair dealing as it stands now in section 3, I respectfully submit that what you have is a toothless section. It does nothing more than what already exists.

Do we just want optics? Do we just want to look politically correct in putting this in there? I respectfully submit, no, we don't. I only ascribe the best intentions and I think it's important that the Legislature and the government not allow themselves to put into law some-

thing that basically does not change the problem for which the law is being enacted. It's got "fair" in there. Let's ensure that there's some fairness ensured by what's in there. If we don't, it'll look good in the name of the law but it will not have any practical effect.

I could go on and give what the proper definition of a commercially reasonable transaction is, but I don't think that's necessary here. You have your experts who can tell you that. But having that in the law, one might initially say: "That's going to cause a lot of litigation. There's Gibson the lawyer. He's going to make more money. That's great." But that's not really what it will do. It will make people have a sober second thought, the franchisor before they do something and the franchisee before they do something. It's ensconced in our law already. The Personal Property Security Act has it, and it's defined. There is a lot of jurisprudence about commercially reasonable transactions and what is and is not acceptable. I think if the law succeeds in doing one thing, then that's what it should do. I'm a litigator, so I only get involved when the problems happen, but in consequence I see what the problems are with disclosure, with right to associate, and with the duty to deal fairly. If this law were to succeed in doing one thing, it should be the fair dealing, because that permeates throughout, whether it's at the front end or the back end.

1530

The right to disclosure helps those 1,000 people who go into a franchise every year, but it doesn't help the 40,000 who are there presently.

The right to associate: Mr Tremblay was speaking from experience when he said that if the right to associate is not backed up by a regulation which says the franchisor as well has to deal with the association when it's set up—I've dealt in situations where there is an association, but if the franchisor refuses to recognize it, what does it do? Again, a toothless section.

I'd just like to conclude by saying this is a law which is required. In 1997 I was in Queen's Park. I met with Mr Martin, I met with Mr Patten, I met with the then minister, Mr Tsubouchi, and we discussed these very things. It is now some two and a half years later and, to be very frank, it looks as if there has been some backing up in what is in the legislation. Your duty, as elected members, is to look at the best and most efficient way to ensure that all citizens are protected, franchisors and franchisees. Sometimes a franchise doesn't work; sometimes a franchise has to be terminated. Not everybody is a good businessman. It's impossible, in my opinion, for the Legislature to put in a set of criteria for rights.

If you do it on a "commercially reasonable" basis, then everybody has got to stop: "Is this reasonable? Am I putting the screws to this person, or am I being reasonable?" If they can't deal with a reasonable commercial transaction, then they shouldn't be in the business.

Thank you very much for listening to my remarks.

The Vice-Chair: Mr Martin, do you have a comment?

Mr Martin: I sure do.

Mr Gibson: Whoops.

Mr Martin: I can't not respond to your comment on, "Is anything forever?" We had a gentleman before us here today who was second-generation grocery. We had in the Loeb case in Sault Ste Marie two families—

Mr Gibson: I represented them.

Mr Martin: Yes, you did, and one of them left a store in Blind River to his son. His son lost the store, moved to Sault Ste Marie. He thought he would have a chance if he worked hard, if he was a good competitor, a good businessman—and he was all that. He was one of our best corporate citizens. Anybody you'll talk to in Sault Ste Marie today is very sad that he's gone, no longer there. He thought that if he did the right things, if he worked hard and all the rest of it, he was going to have a store that would take him into his twilight years and he would be able to pass it on maybe to another one of his family. Is there anything wrong with that?

Mr Gibson: No. And if there's a "commercially reasonable" provision defining fair dealing—I represented him, so I know what the situation is. If there had been fair dealing and a definition of fair dealing in the law at that point in time, it would have been a different story. And you know something? If there had been a definition of fair dealing in the law at that time, the problem wouldn't have arisen.

Mr Martin: Let me ask you another question, and I know you may have some problem answering because of the confidentiality agreement that you had a hand in, although I don't think you signed it; maybe you had to witness it or something.

Mr Gibson: No, but I have some—

Mr Martin: Yes, some other concerns. Anyway, and this isn't in the bill, the right of franchisees to be consulted on the sale of a system—the franchisee, from what I gather, puts in the money, and the franchisor has the power.

Mr Gibson: Well, that's a simplification, but yes.

Mr Martin: So the franchisor decides to sell the system, but he doesn't ask the franchisee. He doesn't share it with him or explain to him why he's doing this, how this is going to be in everybody's best interest. He just goes ahead and does it. The franchisee wakes up in the morning and it's no longer Loeb, it's Provigo. Is there something that we should be considering there?

There's another part of that, and maybe you can answer them both at the same time. You've looked at lots of contracts. How many sections deal with the rights and powers of franchisees, as opposed to dealing with the rights and powers of franchisors?

Mr Gibson: There are lots of rights given to the franchisor, but very few obligations. There are a lot of obligations given to the franchisee, but very few rights. I hate to come back to the same issue, but that can be dealt with in the terms of a reasonable commercial contract. If it's sold and they don't consult, and the new franchisor comes in and starts acting unreasonably, then he has breached the law. It's as simple as that.

The franchising system is too complicated to say we can break it down into nuts and bolts. You cannot. There

is a myriad of different types of relationships. There is the mom-and-pop new Internet type of franchise which takes \$20,000 to get in and they give you some tools and you try. Then there are the ones that are going to cost you hundreds of thousands of dollars: Canadian Tire, Tim Hortons, McDonald's etc.

To have one law that's going to give a specific set of rights for such a wide gambit of relationships, you're going to hurt by exclusion. You're going to miss things. You're going to have misapplied things. What might be applicable for the mom-and-pop might not be applicable for the McDonald's. But if you look at it and say, "It's got to be commercially reasonable"—it's the sober second thought, when someone is doing it, and they say: "A judge may or may not be looking at this some day. I have to see whether or not I think it would be acceptable."

Of course, a judge is a whole other set of problems, because franchisees don't normally individually have the means to hire a lawyer and have a big fight. I've heard talk about ADR. I didn't mention it but it could very well be a very important tool for the franchisor-franchisee dispute resolution system because it's very costly to hire lawyers, and it should be something which should be a last resort as opposed to something which is the only way.

The Vice-Chair: Mr Gilchrist and Mr O'Toole both have a comment.

Mr Gilchrist: A couple of brief things. I won't indulge in lawyer-bashing but, for the record, if you had gotten to the clause between 2 and 3, you would have seen that 2(2) says that section 3 and others "apply with respect to a franchise agreement entered into before the coming into force of this section, and with respect to a business operated under such agreement...."

The act does very explicitly say that that clause applies to every single existing franchise agreement that's already in force, so they will have protection from day one.

The other thing is, Canadian Tire has no franchise fee—I wanted that on the record—not hundreds of thousands, not one dollar. It never has.

I'd like to very quickly get your opinion in terms of whether the cases you've dealt with, by and large, would have been materially different if there had been full disclosure, and let me underline and re-underline the word "full." Things such as the complete price list of products—if it's a question of let's say a doughnut shop or a pizza franchise—so that you could go to your local wholesaler and compare the price you're being quoted from the franchisor with what would happen if you walked in off the street; if you knew up front all of the terms and conditions that would apply at renewal time; if every material fact—and I appreciate things can change in the course and you talked about areas where there is discretionary power, but even there—if it laid out in detail what those powers could mean, would it not obviate most of the problems that ever crop up in the term of a franchise agreement? Or might it even preclude

a lot of people from getting into questionable franchises at the outset?

1540

Mr Gibson: No, I don't think that it would. It would affect, I'm sure, a certain percentage of franchises at the front end if there was total disclosure. But I don't think, when you have normal franchisees—and again I use “normal,” “regular”—being inundated with all kinds of information and they bring them to me and it's about—I'm trying to think of one that I haven't dealt with so I would know nothing about it. If it was about the growing of flowers in a nursery and they said, “These are the prices,” and these people were not really experts in it and they were relying on this as being information which showed that it would be profitable and subsequent to that they found out that it wasn't, or, more likely, they found out that discretion was exercised, it won't do that much good to have learned at the outset that those were the material facts. I'd like to back up one more step and say I don't know how you could ever disclose all the material facts.

Mr Gilchrist: Let me again put on the table something Mr Konigsberg, a lawyer from Montreal, told us this morning. I thought it was a very wise comment that he offers to prospective franchisees who come into his office. He tells them he won't talk to them until they've either gone out and researched the marketplace or spoken to past franchisees. Why shouldn't the law society make that a requirement for every lawyer?

If you're going to be paid to counsel a prospective franchisee, at the outset, unless they are very savvy investors, why shouldn't your first words to them be: “Ignore everything the franchisor has told you in the sales pitch, everything, because if it isn't in this document, it doesn't matter. Do you understand me?” If they don't satisfy you at that point, are you really meeting their needs by allowing them to go further?

Mr Gibson: Am I a lawyer or a business adviser?

Mr Gilchrist: If they've come to you expecting, when they walk out of that office, to have the comfort level to sign the deal, if you in fact don't know anything about growing flowers—and nor do I—I would like to think that the first responsibility either one of us has would be to say: “I can't even come close to answering the issues when it comes to pricing. They've quoted you certain prospective profits. Here's what you must do to satisfy yourself, because there's nothing I can do in this office.” I would suggest to you that if you don't make that very express statement explicitly clear to them, then they have not been well served in that one regard.

Mr Gibson: When someone comes into a lawyer's office with a bunch of contracts and says, “Review these contracts and tell me the legal effect of these contracts,” if the lawyer does his job, he'll tell him the legal effects. You say to your client: “With respect to the business component, ensure that these numbers are right. Go see your accountant.”

Mr Gilchrist: Whatever direction you point them in, but you would agree with me that they should be seeking other counsel on their business terms.

Mr Gibson: Certainly.

The Vice-Chair: Mr O'Toole, a quick comment.

Mr O'Toole: I think it was clarified that the prior provision you clarified at the beginning is important. You would know, if you've been practising in this area—and I'm not trying to contradict you—but Mr Tsubouchi tried, and there was a working group that has put together a consensus of views. This process has been going on basically since the Grange report. Where other governments have attempted to find the balance and have failed, clearly this attempt is to find the best first step, not to absolve us of making a world of perfection; that, it is not. Do you understand?

Mr Gibson: Oh, sure.

Mr O'Toole: It's certainly a warning to the industry, as Mr Gilchrist said, and the legal community as well, to recognize that. I wish to strengthen the language under “fair dealing” myself if there's something that has been defined in law. The first thing I asked was, “What does ‘fair dealing’ mean to me?” Somebody said that the provision under the Personal Property Security Act would prevail. I am more comfortable with something that's defined; otherwise I'm going to have to pay another \$1 million to find out what “fair dealing” means.

Mr Gibson: Didn't the Grange report give a definition at one point in time?

Mr O'Toole: Yes, that's what I'm referring to. It's back to the Grange report and it's one of the substantive recommendations in there. But I've used my time and I appreciated your input.

Mrs Boyer: I just want to assure you, Chuck, that with all these hearings we're going back with a lot of recommendations to look into and to give force to this bill.

Mr Gibson: When I stated it earlier, I said I don't ascribe any bad faith on anyone's part. You have a very difficult job to do and obviously you have many conflicting interest groups that make presentations to you. Obviously, many of them have good spokespersons and they're persuasive from all contexts.

Mr O'Toole: From all their lawyers.

Mr Gibson: That doesn't necessarily mean that lawyers are good spokespersons.

Mr O'Toole: With respect to your comments about it taking so long, I understand why it takes so long. As I said earlier, there is a myriad of relationships. You can't define the franchisor-franchisee relationship on a piece of paper. It's so wide and vast. That's why I get back to the simple. When I say to define, you're going back to the simple.

Mr O'Toole: You go back to established law.

Mr Gibson: Exactly. You go back to the simple and therefore you're not giving lawyers a pension plan by putting all these various things in there that they can attack. You go to one—and that's what judges do anyway. It doesn't matter what the law says, judges look at it

and say: "Is this reasonable? Should this person have done this?" If not, they'll find a way to get around it.

The Vice-Chair: Did you really think you were going to get through this in 10 or 15 minutes?

Mr Gibson: It's like when a judge asks me, "How long are you going to be?" and I say, "Oh, half an hour." Yes, right, another two days.

The Vice-Chair: Thank you for your time.

ALGONQUIN TRAVEL CORP

The Vice-Chair: Our next speaker will be Mr Greenwood from Algonquin Travel.

Mr Ron Greenwood: Good afternoon, ladies and gentlemen. Thank you for providing me with an opportunity to address these hearings. My name is Ron Greenwood. I'm president of Algonquin Travel Corp. I'm a graduate of Ryerson Polytechnic Institute's chemical engineering program and Wilfrid Laurier's business and economics program.

In 1967, I joined Imperial Oil Ltd and worked on the Esso service station franchise program. In 1971, I purchased an E.K. Williams bookkeeping and accounting franchise as a franchisee. I successfully operated that franchise, becoming the largest franchisee out of more than 30 franchisees in Canada, and sold that business in 1978. In the same year I joined Algonquin Travel Corp, and today I'm responsible for all aspects of the efficient, profitable and successful operation of Algonquin and its related businesses.

During my tenure in the travel industry, I've been fortunate to hold numerous positions serving the travel industry and the franchise communities, including sitting on the provincial and national boards of the Association of Canadian Travel Agents. I co-chaired the Ontario travel industry self-management steering committee, which led to the formation of the Travel Industry Council of Ontario, or TICO, and was a member of the first TICO board. Most recently, for the past two years, I chaired the board of the Canadian Franchise Association and now remain on that board as past chair. Having shared that knowledge of me, I will proceed to share with you my views about the proposed legislation.

My presentation to you today is as president of Algonquin Travel Corp, an interested and concerned franchisor doing business in Ontario and that other regulated province, Alberta. As such, I trust that you'll find my input on the draft legislation relevant to the committee's consideration.

Algonquin Travel has about 80 franchised travel agency locations across Canada, of which about 50%, or 40, are located within the province of Ontario. With more than 30 years of franchising experience behind me, I am strongly in favour of the proposed legislation. For the past eight years, we've provided full disclosure to all of our prospective franchisees. It was the law in Alberta and, latterly, a requirement of membership in the Canadian Franchise Association. Our experience at Algonquin is that full disclosure provides the prospective

franchisee with all of the information that is required to make an informed decision, including—very important—a list of all the franchisees; past litigation and franchisee terminations, if there are any; a detailed description in lay terms of the franchisee obligations and commitment to the franchise system; and the financial status of the franchisor.

1550

Additionally, the proposed legislation proposes fair dealing and the right of all franchisees to associate and communicate with one another. To go beyond such disclosure at this time is unfounded and without justification. Alberta found that more rigorous legislation was unworkable and unjustified and was subsequently simplified to today's disclosure style of legislation, in form similar to that being proposed by the government of Ontario.

As a responsible franchisor, we absolutely need franchisees to be successful. We've had failures and the consequences have been very significant—almost bringing down my chain in the early days. Franchisees are both an asset and a liability. As an asset they commit their time, dedication, capital and enthusiasm to help build our system. On the liability side of the equation, we entered into significant contracts to support each franchisee. We have a very significant commitment to each of our franchisees, as follows.

We head-lease almost all of our premises. A failed franchisee is a significant liability. We've lost money on every failed franchisee, in most cases more than the business was ever worth in the first place.

We have a fiduciary obligation to our customers and our franchisees to guarantee, to the best of our ability, that each of the customers receives the quality and quantity of services contracted for. A failed franchisee is a significant liability costing us money that is usually not recoupable.

Most supplier contracts are in our name and suppliers demand payment if the franchisee cannot pay. Non-payment will result in a demeaned relationship with that supplier and degrading the entire Algonquin system.

Our franchise support centre has significant human and technical resources to meet the needs of operating franchisees to support the system.

Our bankers require a "soft" letter of comfort for all Canada Small Business Financing Act types of loans, stating that in the event of a failed franchise, all proceeds realized on the resale of the franchise will be first used to retire bank obligations before any funds are used to offset indebtedness to our company.

In summary, I reiterate that we need happy, successful, profitable franchisees. If we have unsuccessful franchisees, it's very expensive, cumbersome and time-consuming to get these people out of our system. The proposed legislation will help to create a fair, informed and balanced environment for both the franchisee and franchisor.

Legislation can never be a substitute for doing your homework before you make a decision to purchase a

business. This legislation sets a solid foundation for any entrepreneur who is looking to make an educated decision about investing in a franchise. The government's draft legislation sets out fair and reasonable disclosure requirements. The legislation will have the greatest impact on new franchises being sold in Ontario, by requiring all franchisors from now on to provide the level of disclosure that the very best franchise systems already disclose. Disclosing all of the necessary information needed to make an informed decision before any agreements are signed, combined with a cooling-off period, will ensure that the franchisees are able to make sound business decisions in selecting a franchise system. I urge you to pass this long-overdue legislation.

Perhaps just a couple of comments because I haven't really heard very much from franchisors in these hearings, certainly not today.

Some of the examples of losses: My former partner and I feel that over the last 20 years we've lost about \$2 million in failed franchisee-type operations. It's not insignificant for a small operation. To put that into perspective, my total gross revenue in my system today, not the sales of the system but the revenue coming into my company, is about \$4 million a year. We actually budget right now more than \$100,000 a year for failed franchisees; that's only one, maybe two, out of a system of 80-plus franchises.

I'll give you some examples and I'll be right upfront. Cadillac Fairview, Portage Place, Winnipeg, Manitoba: We lost \$150,000 when Cadillac Fairview built kind of a Taj Mahal, a very deluxe operation akin to the Eaton Centre in Toronto, the Rideau Centre here in Ottawa. It didn't work very well. We were on the hook for a 10-year lease. The franchisee lasted a year and a half or so and ended up relocating outside of there, and we had to eat that lease because that place was not rentable. A deluxe facility.

I had another franchisee that was with me for 11 years, absolutely an impeccable franchisee. Something went wrong. Two years ago at Christmastime, he stopped paying some of his suppliers. I found out about it at the end of January, started taking action in February, and by the end of March he was into the system for almost \$300,000. I ended up losing \$75,000. Never could re-franchise that facility; lost it all.

I had another franchisee, another one in Manitoba—I don't know; it must be the air out there—the fellow ran into some marital problems and drinking problems and they installed one-armed bandits. This fellow was in a cash-rich business, had been with me for seven or eight years, was a model franchisee during most of that period of time. He started taking the cash from this business and it just didn't make it to the till or the bank. He ended up going out of business, and we lost \$65,000 and could not re-franchise that facility. All the business had been driven away.

I guess the point here is that each franchisor has a significant investment in each one of the franchisees; it's not a case where the franchisee pays everything and the

franchisor collects the money. That is absolutely not the case. In our own operation, we feel that we have invested at least 50% and perhaps 100% of the money that each of the franchisees has invested on a per-facility basis. We have a very significant investment in our operation and we need those franchisees to be successful.

I could go on. Over the course of 20 years, we have perhaps 25 or so failed franchises. We were at 100 at one time; we actually sold off some of ours to a competitor because they were too small, but maybe 25 failures out of 100 over the course of 20 years. Each one hurt a lot. I believe this legislation goes a long way to disclosing adequate information to all of the prospective franchisees, and I hope it will add a fair level of integrity to the franchise community here in the province of Ontario.

The Vice-Chair: Thank you, Mr Greenwood. The first questions are from the PC members. Mr Gill.

Mr Gill: Thank you, Mr Greenwood, for coming here. A couple of times it was mentioned today that nothing is forever. You did say that you have a disclosure agreement of some kind when you talk to your franchisees. In the new one that you supply these days, does it have any clause about this e-commerce coming in and the Web tickets and whatever else is going on in your industry?

Mr Greenwood: Actually, it doesn't, and that's a very good point. You try to have agreements that encompass everything; three years ago we really couldn't see much about e-commerce, and some of our agreements—the initial term is 10 years, renewable for another five and another five. We're right in the heart of e-commerce country, and before I came here today, the full three hours was spent on a new booking engine for our system. We couldn't have anticipated that three years ago. We have just rolled out state-of-the-art technology this year at a cost of about \$2.5 million to our small system.

I can tell you, yes, I've got 20 or 25 franchisees that are very anxious about it. Maybe I have more that are anxious, but 20 or 25 that are reticent about committing to this new technology, so much so that they have kind of steered clear of it so far. It's just a scary environment.

Before we started rolling this out, we did a lot of homework. We were led by some very savvy people in the industry, and I think we've got a very cost-effective, state-of-the-art program that will take our franchisees into the new millennium. I'll tell you, they'll be head and shoulders ahead of 95% of the people in the industry. But still, I've got 25 guys who say, "Don't need it; don't want it; afraid of it," and my job is to convince them otherwise.

Mr Gill: Under your system, who holds the actual licence, the retail licence?

Mr Greenwood: The franchisee is licensed by the province of Ontario, and he also holds an IATA licence by the International Airline Transport Association to issue tickets.

We hold all of the leases. We hold all the technology contracts. In fact, to get the technology we were just talking about, I had to co-sign a blank guarantee with the leasing company such that if any of the franchisees

failed, I had to pay. Similarly, our technology contract, which is about \$7 million over a three-year term, I had to guarantee. It's one contract for the entire system.

Mr Gill: In your mind, from what you've just explained to me, you pretty well are already doing these things that are encompassed in Bill 33.

Mr Greenwood: Yes.

Mr Gill: The right to associate, the disclosure agreement—

Mr Greenwood: Yes.

Mr Gill: So you support that.

Mr Greenwood: Yes, I absolutely do. I think what a lot of people are missing here is that we're still in a commercial marketplace and if all prospective franchisees have access to or knowledge of your existing franchisees, it's incumbent upon those prospects to talk to the existing franchisees to find out what the relationship is, because no matter how thick that document is, whether it's one inch, five inches or whatever, you can't have everything in there and more knowledge is gleaned from talking to a handful of existing franchisees than we can ever put in our promotional literature.

Mr Martin: You talked about the experience of Alberta and how the legislation there to some degree didn't work, so they backed off. In the work that I had done to compare various jurisdictions and the legislation they have in place, under "fair dealings" and under "enforcement mechanisms" or bodies in Alberta, they committed in their bill that a self-governing body be appointed by the Lieutenant Governor in Council to promote fair dealing among franchisors and franchisees to cover both issues. To date, no such body has been appointed. Would that have anything to do with the fact that their legislation isn't working?

Mr Greenwood: No. In fact, fair dealing is quoted. If you have any potential litigation or a statement of claim, fair dealing is mentioned in every single one them, to the best of my knowledge. So "fair dealing" is an issue in Alberta and, to the best of my knowledge, it is expected to be abided by, although there is no definition of "fair dealing."

Mr Martin: I'm told that in Alberta the number of cases hitting the courts is still as high, if not higher, than it was back before the legislation was actually passed.

Mr Greenwood: I don't have any empirical data to that.

Mr Martin: OK. Just to make the point that so far that body in Alberta hasn't been appointed.

Mr Greenwood: Just in Alberta. Before this reduced legislation came into effect, we had to charge prospective franchisees about \$10,000 more than we did in Ontario just to cover the costs. The costs in Alberta were prohibitive.

Mr Martin: You mentioned also in your deputation that you make available to prospective franchisees a fairly complete disclosure statement, including the name of former franchisees. Do you have former franchisees out there who have a confidentiality clause attached to any agreements you made with them?

Mr Greenwood: All of our franchise agreements, of course, have confidentiality clauses, but nothing that would restrict them to talk about business in general. They couldn't disclose trade secrets, the way we do business and that sort of thing, but general comments and questions about the franchise system are fair game.

Do you mean whether there was a settlement of some sort? Of course, if you had some sort of unique one-off type of thing and you made a settlement, both parties would sit down and negotiate that and you'd arrive at some sort of amicable conclusion and you'd sort it out.

Mr Martin: But that person would be out there, not able to speak to prospective franchisees about that particular circumstance or situation.

Mr Greenwood: Perhaps about the one isolated incident, but they could talk generally about the franchise system and their experience within that system, and they do.

Mr Martin: Does the name Ed Barge mean anything?

Mr Greenwood: Oh, it sure does. Yes.

Mr Martin: We had him before us on Monday. Thank you very much.

The Vice-Chair: Mr Greenwood, thank you very much for your time today. We appreciate that.

Ladies and gentlemen, that concludes the open session of the committee meetings here today and we'd ask if you'd leave the room. We're going into closed session for a few minutes.

The committee continued in closed session at 1605.

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Standing committee on regulations and private bills

Franchise Disclosure Act, 1999

Comité permanent des règlements et des projets de loi privés

Loi de 1999 sur la divulgation
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Thursday 9 March 2000

Jeudi 9 mars 2000

The committee met at 0923 in the Hilton London Ontario, London, following a closed session.

FRANCHISE DISCLOSURE ACT, 1999
LOI DE 1999 SUR LA DIVULGATION
RELATIVE AUX FRANCHISES

Consideration of Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors / Projet de loi 33, Loi obligeant les parties aux contrats de franchisage à agir équitablement, garantissant le droit d'association aux franchisés et imposant des obligations en matière de divulgation aux franchiseurs.

JOHN LESSIF

The Vice-Chair (Mr Garfield Dunlop): Good morning. We are ready to start. We have 20-minute presentations, and that includes the question period. We like to ask at least one question from each party. I'll just notify you at the five-minute interval.

Mr John Lessif: I'll do my best to allow some time.

The Vice-Chair: If you can. If we don't get time to answer questions, that's one thing, but I just wanted to let you know that that is part of the 20 minutes. You can proceed.

Mr Lessif: Good morning, everyone. My name is John Lessif, and I am the owner-operator of four McDonald's restaurants, located in the communities of Ingersoll, Tillsonburg and Woodstock. I'm also a member of the Franchise Sector Working Team, which has been involved in the development of Bill 33. I have been an active member of the FSWT since it was first established in 1995.

I am pleased to have this opportunity to offer my opinions to the committee on Bill 33. My views are based on my experience as an independent owner-operator in a franchise system and reflect my opinions as a member of the Franchise Sector Working Team.

By way of background, I have been a franchisee in the Canadian McDonald's system for 20 years, and I'm proud to say that in that time my business has evolved into a family operation involving my two children. When I chose to enter a franchise system, as opposed to starting my own business, it was because franchising offered me

a readily identifiable brand, a proven operating system and the appropriate support and training.

Like me, my fellow McDonald's franchisees are independent, small business owners, and collectively we represent 70% of the system's 1,100-plus outlets across Canada. In Ontario, there are 99 franchisees who own and operate 287 McDonald's restaurants. Like any small business owner, we have invested substantial savings and have dedicated ourselves to operating viable and successful businesses.

As a McDonald's owner-operator, I pride myself on the very significant contributions my business allows me to make to my community. Not only am I highly involved in local community and charitable activities, but my business makes a considerable economic impact as well. I employ a total of 240 employees across the three communities in which I have restaurants, ranging from 60 to 100 employees per location. Perhaps most importantly, the majority of these employees are young people, high school and post-secondary students, who need that first-time employment opportunity and on-the-job training to gain a foothold in the job market. To sum up, operating a thriving business puts me in a position to make a meaningful contribution to the local economy and my community.

I'd like to talk about the issues that are in the bill. Let me begin by expressing my support for the introduction of Bill 33. I would like to take the next few minutes to comment on certain elements in the bill, as well as a number of issues that continue to be raised in the context of what is absent from the bill.

The first element is excessive regulation. At the outset, I would like to say that any legislation affecting the franchise industry must strike an appropriate balance in providing certain protections for franchisees without driving up the costs of entering the industry. There are many responsible and successful franchise systems operating in Ontario today. Legislation designed to protect the prospective or established franchisee must not be so onerous or restrictive that it penalizes responsible franchisors, either financially or administratively, resulting in excessive costs to the system.

Legislation that over-regulates the industry will only result in higher costs of doing business for both the franchisor and the franchisees like myself. On the broadest level, increasingly prohibitive costs will have a dampening effect on industry growth, to the detriment of

existing systems, new franchise opportunities and associated employment growth. At a micro level, this can indirectly impact small-town owner-operators like myself, who, in the face of rising system costs, will be challenged to maintain and grow our support of the local economies, both through employment opportunities and community involvement. I believe Bill 33 balances the needs of all parties without imposing undue or costly restrictions on the franchise industry.

On disclosure: As a franchisee in a mature and successful system, I strongly believe that disclosure, one of the cornerstone principles of the draft legislation, is a critically important element in determining the viability of any business undertaking. The disclosure requirements in the bill will ensure that those interested in investing in a franchise opportunity have access to key information needed to make a fully informed decision before signing a franchise agreement.

It is also important to acknowledge that disclosure can only enable a potential franchisee to make a fact-based decision based on the actual state of a franchise system at a certain point in time. It is simply not possible through disclosure to legislate for any number of unanticipated changes that may develop over time. I believe the disclosure requirements set out in the bill are fair and reasonable and will provide the appropriate level of insight into a franchise system's financial status and operating practices.

0930

I want to emphasize, however, that even the highest level of disclosure does not relieve the prospective investor from the obligation to undertake due diligence in evaluating the information they obtain. A prospective franchisee, like any prudent investor, must properly assess this information in conjunction with input from the appropriate advisers and independent research. In my opinion, it is incumbent on the potential franchisee to not only consult with legal and financial advisers, but to go beyond this and research local market conditions through discussions with local economic development officers and local chambers of commerce.

In summary, legislated disclosure requirements are not a guarantee for success. They are of no real value to the prospective franchisee who chooses to proceed without a proper evaluation of all the facts. Simply put, common sense cannot be legislated into the business process.

On the right to associate, there are several franchisee forums in my system that facilitate franchisee discussion on relational and business issues. For example, the McDonald's system employs franchisee strategy teams, national and regional advertising boards and a national licensee council which deals specifically with relationship issues. Further, McDonald's places no restrictions on me from associating with any organizations outside of the McDonald's system.

With regard to the right to designate suppliers, McDonald's employs a central buying system to negotiate product purchases based on its system-wide needs for both corporate and franchised restaurants. This high-

volume approach results in significant economies which translate into lower costs for the Canadian system and, ultimately, our customers. As a franchisee, I also rely on the quality assurance, product specifications and product development that come with the company's involvement in procurement.

McDonald's does not use the vertical integration approach to purchasing, but rather all goods, services and products are purchased from arm's length, third-party suppliers. In addition, all corporate dealings with suppliers are transparent in that all product and distribution costs across the Canadian system are fully disclosed. Any cost savings and rebates are passed on to the whole system. Bill 33's disclosure requirements will ensure that a franchisor's policy regarding supplier rebates and discounts is known to the prospective franchisee.

While I and many of my fellow franchisees do source some products locally, I understand and accept that the strength of the centralized system and the collective benefits it provides would be undermined by any great degree of independent sourcing by those in our system.

With respect to dispute resolution, at present all disputing parties may voluntarily agree to submit to mediation. Further, it is my understanding that the recently implemented court-mandated mediation program will encompass franchisee disputes. Therefore, I question the need for a separate process to be mandated under Bill 33, particularly when no better resolution would be guaranteed. Would not a separately legislated process conflict with a court-mandated program? Again, creating a separate dispute resolution mechanism, with its associated costs, will only contribute to increased costs of doing business in the industry.

The McDonald's system supports the concept of mediation as an alternative dispute resolution mechanism and employs it on a voluntary basis. By its very nature, mediation must be voluntary to be effective.

On encroachment, I agree that, through pre-sale disclosure, a potential franchisee should be made aware that at some point in the future the franchisor may build additional outlets in a defined proximity of the subject site. It should also be clear through disclosure whether the franchisee will have the right of first refusal on any new outlets and whether the franchisor has a policy regarding encroachment. I would like to point out, however, that it may not always be in the best interests of the franchisee to assume a new site. For example, I would be making an ill-founded business decision to assume another outlet if I believe that the site is not a good one, if I do not have sufficient capital for the additional investment or if I am experiencing challenges in managing my existing business.

Encroachment is not an issue in the McDonald's system. Where a franchisee's existing business is impacted negatively by a new location, whether it be corporate or franchised, the issue is always discussed in order to reach a mutually satisfactory resolution.

On relationship standards, it is my belief that relationship standards cannot be legislated. How can trust,

respect and openness be measured and interpreted in an objective way? In my view, trust, openness and respect between the franchisee and franchisor can only be established over time. The imposition of relationship standards could have a detrimental effect on the highly productive relationship that currently exists between me and my franchisor. Regulation of the franchisee-franchisor relationship would force my franchisor to work to meet an imprecisely defined standard that may be inconsistent with the culture of co-operation, consensus and collaboration that McDonald's has cultivated.

In respect to sales projections, I recognize that there have been cases where sales projections have been used loosely in the pre-sale process. I suggest that sales projections should be supplemented with two additional pieces of information: first, industry sales data that would provide the potential franchisee with a benchmark on generally how the industry is performing; and second, historic sales figures on comparable existing sites in the system. Both of these would provide the potential franchisee with more information than they might have access to otherwise.

In conclusion, from my perspective, the majority of franchisees in Ontario are involved in sound franchise systems and operate successful businesses. It's my observation that for this reason a large proportion of franchisees who fully support the bill may not take the opportunity to participate in the public hearings because they are either too busy running their businesses or simply have no issues to raise.

In closing, I support the introduction of the bill and believe that it embodies a number of key principles important to strengthening the franchise industry, to the benefit of both franchisees and franchisors. I look forward to my continued involvement in the legislative process for the bill as a member of the Franchise Sector Working Team.

I must apologize for this, because in doing a little bit of homework this morning when I got up, I realized that on Monday when I sat in at Queen's Park and listened to the presentations and in reviewing my presentation this morning, I perhaps missed communicating these points in my presentation, so I don't have anything written on this. I'm just going to give this verbally.

The Franchise Sector Working Team met a week ago and talked about five proposed amendments that the committee might consider putting into the bill. I don't have that in writing, so I'm going to give these verbally to you. After discussion at our meeting a week ago, the consensus from the team was that we should propose these to the committee today to consider in making amendments to the bill in future.

(1) To expand the right of action for misrepresentation to include agents and brokers. Currently, agents and brokers are not mentioned at all in the bill.

(2) To permit electronic disclosure. This was touched on, I know, on Monday; I don't know about in Ottawa or Sault Ste Marie. But we're recommending that you consider adding that to the regulations.

(3) To require disclosure for the sale of an additional franchise to a franchisee if a material change has occurred. That point is that when a sale is made, it currently reads that those are exempt. We don't feel that they should be exempt, so we'd like you to consider making that change.

(4) To require disclosure for renewal of pre-existing franchise agreements. Currently, pre-existing agreements do not apply in the bill, so we'd ask you to consider adding that or making the change to that.

(5) The term "payment" in the definition of the franchise; to clean up the wording on that. As it now states, there are franchisors out there which do not ask for a prepayment. These franchisors should be included. Canadian Tire, for example, when you buy that franchise you're not asked to put up a fee in advance. So, those franchisors which don't ask for prepayment should be included in the wording of the bill.

That concludes my presentation this morning. If you have any questions, I would be happy to try to answer them.

The Vice-Chair: We've got about six minutes. First, the PC caucus, have you got any comments?

Mr John O'Toole (Durham): Yes. Thank you, Mr Lessif, I appreciate that, and I'd like to thank you for your work on the franchise working group. I think they've worked very hard to come up with some sort of balance, and I appreciate that. Just to reinforce a couple of points, I appreciate the amendments as well. This is an ongoing thing. There's always a state of reviewing excellence, and that's what it's about. It's in a continual state of review. In a regulatory sense, probably the easiest way to legislate this is to provide a legislative framework with regulations that can be ongoing and updated.

0940

There are just a couple of points I'd like to re-emphasize. You mentioned, after your 20 years of experience in a successful operation, the due diligence that's incumbent on the franchisee. Would you like to see incorporated some strengthening of those duties so that they're actually signing off? We've had this mentioned on two or three occasions, having independent legal advice rather than just rushing in and opening that store and getting going. A lot of the enthusiasm for new business operations is such that they want to get going; they may not take the due diligence. So how about the independent legal advice and the independent financial advice? You have mentioned that, but perhaps you'd like to address it.

Mr Lessif: If I understand your question, you're suggesting that it be put in a regulation for the franchisee to sign off on?

Mr O'Toole: Yes.

Mr Lessif: I think that's an excellent suggestion, by all means, because what happens when you start a new business is that the adrenalin gets flowing and sometimes your heart rather than your head makes some of your decisions for you. That's an excellent suggestion.

Mr Bruce Crozier (Essex): We don't have much time and I thank you for your presentation. In your conclusion you said from your perspective the majority of franchisees in Ontario are involved in sound franchise systems. What is your perspective, to back up that statement?

Mr Lessif: My perspective is just my knowledge of the franchise industry for me as an independent person involved in our chambers of commerce in three communities in southwestern Ontario, that experience that I have.

Mr Crozier: Do you have some knowledge across Ontario, to make that statement?

Mr Lessif: Only in respect to the fact that I'm involved in many of the organizations that McDonald's has from a franchisee standpoint, so I get exposed to a lot of Ontario, other communities.

Mr Crozier: OK. Thank you.

Mr Tony Martin (Sault Ste Marie): We've heard some pretty sad stories over the last two or three days in front of this committee, both in camera and in public, of particularly franchisees who find themselves caught up in bad systems that act unilaterally, have agreements that are stacked in their favour and they have no compunction about using that.

You present your case as a man with a family who's been in this business for 20 years, and I suspect that you hope to be there for a good long time to come—

Mr Lessif: God willing.

Mr Tony Martin: —and perhaps even pass some of these entities on to your children to run.

We had a number of people before us yesterday in particular who were hoping to do the same thing. I wouldn't characterize them as young, woolly-eyed, heart-pounding, excited entrepreneurs. Some of them have been in the business for a long time. Some of them learned the business from their fathers and their mothers. At this point in their history they're under threat of losing that business and don't see for them a bill that focuses almost solely on disclosure of information on the sale or buying of a franchise as in any way going the distance to protect their interests or to give them a fair shake at protecting their interests.

What do you have to say to them this morning that might give them some comfort re this legislation that we're considering?

Mr Lessif: I'd like to respond to that wearing two hats, one as an independent owner-operator and the other as a member of the Franchise Sector Working Team.

Over the last five years the team put our best thinking together, which you people have in front of you there, for the wording of the meat of the bill, and there was give and take in that. It's not a perfect scenario. There was give from franchisors and there was give from the franchisee's point of view.

What this bill does, I think, is present a fair and equitable situation to look after all franchise scenarios. I can't speak to an individual who has had a franchise for a number of years and for whatever reasons is faltering.

You are asking me to answer a somewhat speculative question, and I don't think I can answer that.

Mr Tony Martin: I suggest to you that the bill we have in front of us continues a regime where it's all take on the part of the franchisor and all give on the part of the franchisee. If at this point in our history we don't have the intestinal fortitude to do what is right on behalf of the many very hard-working, sincere, intelligent small business people across this province, who have been represented to some small degree over the last two or three days, telling us their stories, then this will continue. And people like you and I, who I suggest know better, will have to live with that.

The Vice-Chair: You have about a minute left to respond.

Mr Lessif: I guess my comment on that is that the Franchise Sector Working Team put this bill together to submit to this committee to amend or add to. In our best judgement, this is a fair bill that answers to the points you made. That would be my response to that and my comment on that.

The Vice-Chair: Thank you, Mr Lessif. I appreciate that very much, and thank you for bringing those proposed amendments for us today too.

FRANCHISE SECTOR WORKING TEAM

The Vice-Chair: Our next presenter is Mr Bob Krupp of Krupp's Food Market. Welcome. We are on a 20-minute schedule, so please free to start right now.

Mr Bob Krupp: Thank you and good morning. First, my apologies. I have "Madam Chair" on this. Is the Chair still ill?

I'm just going to read from this, but I would like to make one comment on the heels of John's comments with regard to the bill that was put forward. We were all part of that on the Franchise Sector Working Team. However, the basics of fair dealing are still at issue as far as I'm concerned, in that, yes, fair dealing is mentioned but it's not defined. You will see that that runs through here and may sound like a conflict between John and me. I think the fact that fair dealing is there is important. But having said that, I believe there is more to be done.

My name is Bob Krupp. I am from Kincardine, Ontario. I am addressing you today from my perspective as a past franchisee and with very limited experience as a franchisor. I am also currently an acting member of the Franchise Sector Working Team.

During my working career I have experienced some of the strengths and weaknesses of the franchise sector from both perspectives. From 1968 to 1979 I was employed by an independent grocery wholesaler, Knechtel Wholesale Grocers, from Kitchener. During my tenure with Knechtel, after three years in the wholesale division, I managed and supervised corporate supermarkets in the Kitchener area for Knechtel.

Subsequently I purchased a small grocery store business in Kincardine, Ontario, from Knechtel Wholesale

and operated it as a Knechtel associate store, a franchisee, until 1995.

Although there was no upfront franchise fee associated with this purchase, it was mutually agreed that Knechtel would be the primary supplier of goods and that the associate store would comply with certain standards of customer service, advertising and operations. It was more or less a buying agreement.

The implied and practised objective was for Knechtel to assist the franchisee to achieve operational success and profitability, thereby increasing revenues and profitability for the distributor-franchisor.

During the 1979-95 time frame, with the assistance of the franchisor, my company assembled appropriate property and developed, constructed and operated a larger, full-service supermarket in Kincardine.

Concurrently, my company redeveloped the former grocery store location into a mini-mall in order to offset obligations of the lease that had several years remaining. One of these retail outlets was a convenience store, which I developed in a similar fashion to a franchise.

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Ultimately, because my focus was on the supermarket, I adjusted the business format of the convenience store to that of a partnership, with the ultimate objective of selling the business outright to the franchisee. I felt that unless my company was prepared to contribute continuing expertise and assistance to the franchisee, the drivers would not be substantial enough to promote a high level of commitment by the franchisee.

I would like to state up front that I believe franchising to be an excellent vehicle for supplying high-quality goods and services to consumers in an efficient manner. If the goals and objectives of both the franchisor and the franchisee are met, the chances of success are very high.

Often an individual has many qualifications required to achieve success in retailing; however, they sometimes perhaps lack the capital resources or a commercially viable business idea. With the assistance of a franchisor having developed a successful business format, the franchisee, through sweat equity, may be able to secure financial stability as well as build equity in the franchise business.

There are several examples of very successful franchise systems that have provided financial success for many individuals. However, given the large number of failures in this growing sector, I think it is fair to say that there are good franchise opportunities as well as those which have been developed simply to attract the hard-earned after-tax dollars of unsuspecting individuals.

In a perfect world, the need for legislation would not be an issue. Experience demonstrates that it is because of the self-serving franchise systems that inequities exist, and therefore some mechanism must be sought to level the playing field to ensure fair dealing.

I will attempt to be brief in my comments because the committee has previously had the benefit of several expert witnesses regarding the goals and objectives of the Franchise Sector Working Team.

The Franchise Sector Working Team, as you are aware, consists of representatives from the Canadian Franchise Association, franchisees from a variety of Ontario franchise operations and Ministry of Consumer and Commercial Relations staff. Additionally, experts representing the views of franchisors and franchisees are present to provide professional perspectives on franchising.

The Franchise Sector Working Team was formed in late 1994 to work together in order to establish a framework by which the franchise sector could address mutual interests as well as to determine the need for legislation. From the outset, it was evident that franchisor representatives wished to have less regulation and disclosure, while franchisee representatives preferred more disclosure together with a method for dispute resolution. Several important areas of concern were discussed at length, at times generating heated dialogue as to what should be included in legislation and regulation. Some pertinent issues discussed were: self-regulation; good-faith standards, or fair dealing; power imbalance; alternate dispute resolution; code of ethics or conduct; disclosure and misrepresentation; territory or market exclusivity; and arbitrary termination of the franchise.

Prior to speaking to specific issues of concern, I would like to state for the record that I am in agreement with several minor amendments being advanced to the committee by MCCR staff, which are: to permit electronic disclosure; to expand the right of action to agents or brokers; that upon granting an additional franchise to an existing franchisee, disclosure would be required only if there had been a material change; that franchisees pre-existing before legislation would be subject to a disclosure document upon renewal or immediately in the case of a material change, as suggested above; and within the definition of "payment" include the terms "direct" or "indirect" payment. That alludes to what John was saying with regard to franchise fees that are built into the operational and purchasing of goods and products.

In the interests of brevity, I will confine the remainder of my comments to two specific areas of the proposed legislation put forward by the ministry that fall short of my expectations.

Fair dealing: Although the fundamentals of the proposed legislation were reached by consensus, the "fair dealing" clause, as proposed, will not achieve the result sought by franchisee representatives. Franchisee representatives proposed that a code of ethics or conduct be developed to define the terms under which a franchise would operate. However, agreement could not be reached with regard to enforceability. It was agreed that a "fair dealing" clause would be necessary to ensure that the imbalance of power inevitably present in this business format was addressed with regard to dispute resolution. In the absence of a mechanism for statutory remedy, a code of ethics or good faith standard is virtually meaningless.

Alternate dispute resolution: Again, in the absence of a suitable dispute resolution mechanism, fair dealing

must have a definition and state the remedy available to the franchisee. Stating the terms of fair dealing, if in fact franchisors intend to participate in an active, expanding market in the long term, would not disadvantage any legitimate franchisor. Considerable discussion ensued with regard to the appointment of an ombudsman to assess the validity of a dispute between a franchisee and a franchisor. It was felt that a third party review by someone familiar with franchise sector issues could resolve disputes, avoiding costly litigation. The imbalance of power between franchisees and franchisors renders litigation irrelevant due to cost.

In conclusion, there are, of course, many additional areas of concern that in my view should be strengthened in the proposed legislation. As an example, the issue of balance of power with regard to additional franchisees in a particular market is not addressed. However, I feel it is important to move forward with at least a basic framework that provides some elements of fairness. I believe that if fair dealing and commercial reasonableness were defined, with substantial consequences in the case of a breach, this legislation would be a good first step. However, if this is not addressed as a minimum, in my opinion the Franchise Sector Working Team has achieved very little.

Thank you for your time and attention. If you have any questions, I'm here.

The Vice-Chair: Thank you, Mr Krupp. I'd like to start out with the Liberal caucus.

Mrs Claudette Boyer (Ottawa-Vanier): Thank you for your presentation. It was quite useful; good comments, good recommendations. Along the way, you said you were in agreement with several minor amendments that were advanced. I would like you to elaborate on where you say "within the definition of payment, include the terms 'direct' or 'indirect' payment."

Mr Krupp: I think where the ministry is coming from on that one is that with my franchise, as an example, there was no fee per se. The fee was involved in the purchase of goods, in advertising and other charges that were attributed to the franchisee but not called a franchise fee per se. Lots of franchise fees today, certainly in fast food and others, have a fee that you pay up front and then maybe an ongoing one year after year. I think the ministry felt that if it was missed, then that would be construed to mean that if you didn't pay an upfront fee, there was in fact no franchise fee. So "indirect" would, I think, clarify that there are franchise fees included in the cost of goods or other charges.

Mr Tony Martin: I want to thank you for coming forward and sharing with us your thoughts, and I also want to thank you for your honest assessment of the bill as it now exists. We're trying really hard here to get a handle on the truth in this issue and at times it's difficult because there are competing interests in this, as you know. You expressed and shared with us very clearly your experience of the working team, where there were lots of areas of discussion and disagreement.

You list in your presentation the points that were discussed. There are about eight, and there were actually

only two out of that eight that you really got to in the bill. One was the good faith standards and fair dealing and the other was the disclosure and misrepresentation. You then go on in your presentation to actually say that even those really don't work.

Well, the disclosure will work for new people coming in, but for those already in, there's nothing in there for them. And the stories we've heard over the last three days were primarily about them, some very well-meaning and hard-working individuals, entrepreneurs and small businesses, in my own community and across the province, who are under duress at the moment because there is no place they can go. In fact, the amendments that have been proposed by the working team don't deal with this either. They're technical in nature and they capture the dealers and the brokers, but they don't deal with this.

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I guess my question for you is this. You're saying in your conclusion that in fact the team has really achieved very little. I'm not going to put words in your mouth, but I would go a little further to suggest that if we move forward with Bill 33 and do nothing to it, we are giving out a false sense of security to an industrial sector that may think: "I'm protected. There's legislation, there's regulation." And some of those people who are anxious to get into the business, who do the due diligence now and bring in lawyers and accountants to check it out, may be lulled into a sense of not having to worry about that so much any more if we adopt Bill 33.

You've suggested a further defining of "fair dealing" and I agree with you there. What in your view would be some of the specifics of that that we could do? I guess two questions: One, do you agree with me that that's a possibility, that we could lull people into a false sense of security?

Mr Krupp: Yes, I'd be glad to elaborate on that.

What has happened in our discussions—and the reason I didn't want to bring up all these issues that we've talked about is that they were discussed ad nauseam and in a lot of cases just couldn't go any further—it would seem that the bill needed to get a start. We needed to start somewhere. There are too many dichotomies of interest. In the efforts of getting something put forward, we've agreed to disagree on some of these issues, so the bill went forward.

What concerns me is exactly what you said, that it looks like there's something, but "fair dealing" being stated in a clause just as two words without definition and without clarity on what it is and what it means, I can't take that anywhere. If I'm treated unfairly, in my view, unless there's some description of what that means, it's pretty hard to take that to litigation or even to a third party mediator if it's not defined. It's in the eye of the beholder. So I think there needs to be some description around that term if there's going to be commercial reasonableness practised in a franchise situation.

With regard to disclosure, I didn't address that issue, because I thought that we came a long way with dis-

closure. There are several areas now that will be required. I think Mr O'Toole made a good point though, that disclosure without somebody having advice is a little bit redundant because, again, as John said, the heart rather than the head sometimes makes these decisions.

I wish my cousin had had more disclosure at his disposal. When I was advising him not to go into the franchise he went into—of course, he'd already decided he was going to go in—when I asked him what I thought were important questions that he should know with regard to pro forma, where the numbers came from and how they were going to back that up, if at all, he said, "Oh, well, he said it would be this and it would be that." I'd ask him another question and he said, "Oh, he said...", and then tomorrow, "What does he say?" It wasn't documented, so it wasn't something I could use as ammunition.

I think disclosure is one piece of it. Then that allows a person to go for financial and/or legal advice. The difficulty with that is that the individual who wants to get into business is usually already hooked, already sold on the notion, so it's probably way more important that there is some way to make sure that there's fairness throughout the contract. Not after the signing; the signing is one thing. You can ask all the questions you want and you can get all the disclosure. But once you're in business, it's: "How are you going to react? How is the franchise going to do?" And there are lots of really good ones out there, so I don't meant to beat up the system.

The Vice-Chair: Mr O'Toole has a question.

Mr O'Toole: I appreciate your input this morning. Just a couple of things we may want to get to: You mentioned in a subtle way that you had a brother or a relation who didn't take your advice and went with their heart instead of their mind. Do you think—very briefly, because I have a couple of real questions—that that is substantively the way a lot of the decisions are made by new franchisees?

Mr Krupp: Yes.

Mr O'Toole: I think it is important to really rigidly require certain due diligence provisions—do you know what I mean?—a cooling-off period, whatever. Otherwise, they're just going to say, "Where's the store, where's the key?" I sense it because of some personal experience as well.

I want to respond to a couple of things. You were in the grocery business. We heard repeatedly that the supply issue was a substantive problem in the grocery business, in the disclosure saying, "Thou shalt buy 'everything' from me." It becomes a really serious problem even if it's in disclosure.

Mr Krupp: That's right.

Mr O'Toole: I'm not sure if you have any suggestions there, but it does come back to fair dealing as well. I'm kind of rolling all of this in. It's our understanding that the fair dealing provision is being referenced to the Alberta model, which really hasn't played itself out in the courts just yet. I think there's some sympathy with the "commercial reasonableness" definition, in my mind

anyway. I can't speak on anything more, after listening for a number of days.

You've got the fair dealing and the commercial reasonableness, you've got disclosure and association. Now when you look at where you were—and no perfect world—do you think we've moved tremendously forward from the dilemma we found ourselves in in the early 1990s, when the then government had the ability to make decisions and found a way of avoiding it by finding some kind of working group to deal with the Loeb situation in Ottawa, which is the same business, and did nothing? Do you understand what I'm saying?

Mr Krupp: Yes.

Mr O'Toole: It's difficult to find that balance and move forward. Really, the question is, do you feel there's enough strength, with a few minor amendments, to really make this a win-win for both sectors?

Mr Krupp: If "fair dealing" and "commercial reasonableness" are defined and there are significant consequences if they're found to contravene those rules, then it gives an opportunity, once you're in the deal—with respect to disclosure again, that's fine, and I counselled this fellow quite strongly. I'm pretty aware of business, and I gave him as good a shot as I could. I've taken my spouse often to a lawyer because I'm doing a business deal, and she gets outside advice. He tells her not to sign it, and then of course we sign it. That can sometimes be a false sense of assistance too.

With regard to the grocery industry, the compression is a problem. In my days, the franchise was not that restrictive. But they're tightening the screws, and you're going to hear more stories about it. They are really tightening down. To buy all your product all the time from one supplier is not commercially reasonable in a lot of instances, because they're not that good at what they say they do. Having said that, there are other people with real examples of that.

The Vice-Chair: Thank you so much for your time, Mr Krupp. It has been a pleasure.

Mr Tony Martin: On a point of order, Chair: There is some material you might have some interest in reading that talks a bit about this business of what agreements say and what they don't say and what in fact they really mean. The article I'm referring to is called *Avoiding the Traps: Boilerplate That Fights the Ten Most Dangerous Contract Terms*. I'll give you a copy of the summary our researcher has done so that you can take a look at it and in further discussions you have with the working team perhaps you can bring it up.

Mr Krupp: The notion is to use that as a guideline for improving?

Mr Tony Martin: Yes.

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SUE RICKETTS

The Vice-Chair: Is Sue Ricketts here? Good morning, Ms Ricketts. You can start whenever you wish. You have 20 minutes.

Ms Sue Ricketts: Thank you very much for giving me a chance to speak my opinions. I can't speak for any organization; I can only tell you what happened in my particular case.

I was brought up with the belief that Canada was the land of milk and honey, the golden place. My father chose to come here as an orphan and brought his two sisters with him because of his belief that this was a good place to be and well governed and well controlled and safe.

Until June 1998, I always held that thought in the back of my mind. That's where I come from. I never wanted to leave here. I never had any reason to question. I believed that when things go wrong, as they do at times, this country has laws and courts and mediation systems where wronged parties could present their side and an agreement could be found. I'm not talking about theft, murder, robbery or anything like that; I mean business dealings between two people, two companies, two entities. That's definitely not true regarding franchising. The contract is one way, and no changes are allowed or you're just not a franchisee.

When I look back on it, I can't believe I fell for the scheme. It went like this: "We have a wonderful idea. You put up lots of money, you provision a store, you pay us a fee to use our name, and we'll co-sign all the borrowing you have to do and make a deal with your landlord by co-signing your lease. In exchange, we'll be the sole provider of your inventory, your procedures, your prices and conditions of operation. We'll also mandate when you must do store refurbishing, which contractors you can use, and all the conditions of operation must meet our standards. We'll give you time to try to find out about us, but we won't let you change any of our conditions. We'll tell you what the average franchise should earn. Of course, the statements we give you contain no debt and thus give a wrong picture of the true operating profits."

What all that really means is that they control everything, and when they want to get rid of you, they can and will, without prior notice. They'll take everything and make sure that you can't afford to take them to court. They'll have discouraged and not permitted their franchisees to belong to any group which might insist on mediation or arbitration or some other form of handling disputes. The laws of Ontario let them take away your source of earning without any recompense for past work, for efforts in building them a business, and of course there is no formula for even a partial return of your investment. Thanks for the set-up, franchisor, and thanks for your protection.

Shortly after I lost my franchise, I wrote a statement which speaks to my feelings at that time, and you're welcome to read it. Without any prior notice, my franchise was taken over. In seven and a half hours, I went from owning two locations, with 16 employees, to having nothing except my home, which had been pledged to the bank as security to obtain operating credit. Nice feeling.

Shortly after writing that statement, I received a settlement agreement through my lawyer from the franchisor's lawyer. To a non-lawyer it's pretty intimidating and frightening, and that is its main purpose and intent. I am aware that other franchisees in my situation have received this and signed it, and then of course they can't speak out.

Following a page of legalese, clause 1 says that I agree never to take them to court. Clause 2 says that if they can find fraud, wilful misconduct or misrepresentation by me, or my husband, who was never involved in the business, they can do whatever they want to, and they want me to agree that I'll pay them \$10,000 for every instance they can find of my damaging them or their franchise in any way. Clause 3 says that we, and all our descendants, give up any right to seek redress. Clause 4 says that they admit no liabilities or obligations and we agree with them. Clause 5 says that we will not speak about the terms of this agreement to anyone unless the law requires us to. Clause 6 says that we agree not to talk to anyone connected with them or any potential franchisees in any way that might be construed as negative. Clause 7 says that we all agree not to hinder them in realizing as much from their actions as they can. Clause 8 says that even though they have thrown me out without a thing, the franchise agreement is still in force. So they still have control over me. Clause 9 indicates that the laws of Quebec prevail and that if I want to fight I must go to court there, although my business was not in Quebec, it was always in Ontario.

Needless to say, I didn't sign the agreement that they sent. So we sit, almost two years later, and I have never heard from them since. I never received a penny. I'm now being harassed by a couple of collection agencies over bills which they didn't pay and retail sales tax is holding \$18,000 which they won't release because they can't find out which of their departments cashed my PST cheque in February 1997. There's also a fax that I sent to my local member of Parliament making some recommendations. Even though it's too late for me, it's my aim and my sole intention to prevent this from happening to anyone else.

I've read that since 1993 there have been 170-some articles printed regarding failed franchises. These articles mention 4,600 people directly losing their businesses and their investments. That's a huge number of families being devastated. I'm sure they all had employees who were immediately affected by the business closure or upheaval. You have it in your power to stop this from happening again. Please make sure that you speak for those who need you to do so. Thank you for your time.

Mr Tony Martin: I want to thank you for coming forward and telling your story. I know that it takes a lot of courage and effort to come and do this. This is exactly what we were hoping would happen as we crossed the province these last few days to hear from people who have had an experience in franchising that in some instances was positive, in many instances was not, so that we could get a handle on just exactly what the situation

was and how it was that people were suffering and what things came into play or did not come into play that resulted in this situation as it now exists.

You paint a very worrying picture here with the description of the document that you received and the various things in it, which really speak to what's in it for them and nothing—actually, what's in it for them that they will get from you, more than anything.

I guess there are two questions. Are you aware of others who have experienced the same circumstance? What would you recommend by way of changes to this bill that would have been helpful to you or might even be helpful to you as you continue to struggle with trying to get justice?

Ms Ricketts: My problem with justice is that I can't afford it. They took all my money; they took everything. How do I go to court? I was told by my lawyer that because of the size of the franchisor, they would just put in an appeal no matter what happened, and I haven't got a war chest to fight them. I believe that it's very important that it be mandated by law that there is some form of dispute mechanism which all parties can afford. It doesn't matter who's right, whether it's the franchisor or the franchisee, you should still have the right to mediation. The courts are not really affordable, and they want payment beforehand; they don't want payment when you win. It doesn't work that way.

Just something you might want to know: My businesses weren't exactly that small. I had sales of \$2.6 million a year. However, you'll see my profits were minuscule. They were controlled by the franchisor directly. If there is national advertising that says the price is this much, I'm not going to find a customer who is going to pay me any more. That's part of the problem.

There were a number of systems in place that made sure that your profits were in the hands of your franchisor. We had a credit note system. We had to take all product that was on sale, and the deal was that we kept it for 90 days and if we didn't sell it we could return it. That means I get to pay the freight two ways, in effect. But because of the system, we had to pay for product in 30 days. So I've already paid for it. Then they issue a credit note maybe two months after I've returned the product, which is only good against buying more inventory. It doesn't pay my staff, doesn't pay my landlord, doesn't help me keep the business going, and so I have to go to the bank to get interim financing. That's the way this franchise works.

How do you get out of it? You don't. You keep struggling and working and trying your best to make a profit.

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Mr Tony Martin: You mentioned the question of a dispute resolution mechanism, and I couldn't agree with you more that there needs to be something put in place. What has been suggested over the last three days by some folks is that the new provision in law that cases go to mediation before they actually go to court might do the trick. But what we were told yesterday morning by Professor Gillian Hadfield is that that may, on the

surface, look like a good thing and that it may work, but in fact before you get to that mediation process you actually have to have already developed a case and have had legal advice, and you're into the adversarial legal system already.

What I think you're suggesting, and what I certainly am suggesting—maybe you can comment on this—is a system where there is a third party arbitrator and where, before you get into those very detailed and complicated and expensive legal wranglings, maybe something could be done.

Ms Ricketts: Absolutely. I believe that's the most important part of it. It's my understanding that car dealerships, for one, have that type of agreement. They pay a regular fee, both franchisor and franchisee, to provide funds for a mediation service, if needed. You know that you have the ability to at least argue your case yourself with your franchisor and have it fairly looked at.

I just feel very frustrated because I have no option. I'm just going to have to learn to get over it and get on with life. However, I don't think that's a reasonable way of dealing. I don't think it's fair to say to people: "You've done your due diligence, you've got your job, you've built a business, you've worked very hard, but they can take it away. It's OK." If I were an employee, I would at least get a week's wages for every year that I spent. If you're a franchisee, it's: "Thanks for the business. Bye."

Mr O'Toole: Thank you very much, Ms Ricketts, for a very personal story. Your victim's statement really is a lot more an emotional plea to level the playing field, and I certainly can assure you that I have heard that and it's important.

I look at you, and I've heard a number of stories that were similar, and to put a real face on it is extremely important, outside of this whole legal babble that's in some of this legislation, or any legislation, I suppose. But I want to broaden it out a bit. It's not just this community here, arguably not even just this province.

Ms Ricketts: Certainly not.

Mr O'Toole: The only other province that has any legislation is Alberta.

Ms Ricketts: And even that is not much help; it's 60 days. You don't really know an organization in 60 days of dealing with them.

Mr O'Toole: I guess I'm trying to make a point here, and I don't want it to sound anything more than an incredible lack of leadership federally. Because the very definition of "franchisor and franchisee" under the Competition Act could be described, I'm sure, as an abusive-dominant position. The person with all the gold has all the rules. The golden rule?

There's no question in my view that it's—buyer beware, extremely aware. If nothing else comes out of these hearings, it's certainly important to take a sober second thought, exercise due diligence. You can tell people that until you fall down on the road, but when it's clear legally that you couldn't possibly take on the giant, whoever that is—

Ms Ricketts: Yes.

Mr O'Toole: —not that they're bad but to have your day in court, as you've described it.

I call on the Competition Act to renew the reviewable trade practices under the Competition Act. I think that's critical. Any province trying to, helter-skelter, do this commercial thing isn't really helping the people of Canada. Ontario, certainly by this act, is doing more than nothing and more than the two previous governments, ever since the Grange report has moved forward significantly. Is it perfect? No. But I think if you look at the three fundamental purposes—and this isn't a lecture; it's more or less bringing you up to date on where we are, through what you've lived through and lost, a lot of your life.

Disclosure: I'm sure if we can make that stronger, we will listen to you and others to make it stronger. The whole attitude of fair dealing and commercial reasonableness may even find its way in there and this right to associate, thereby educate your peers. Do you not agree that those are substantively important moves that may help? That's why you're here this morning.

Ms Ricketts: That's why I'm here. When I signed my agreement in 1989, the franchisor assured me and showed me that their franchise agreement met every one of Alberta's rules, was the best legislation in this country. Needless to say, it didn't go too far.

Mr Tony Martin: On a point of order, Mr Chair: Is the parliamentary assistant tabling some amendments here on further strengthening the disclosure piece and also suggesting that maybe we would consider adding commercial reasonableness to the fair dealings?

The Vice-Chair: I don't think he has tabled anything at this point.

Mr Tony Martin: OK. I just thought maybe he was.

The Vice-Chair: We've only got a couple of minutes. I'd like to make sure that the Liberal caucus has a chance to comment on this. Mr Crozier.

Mr Crozier: That's kind of you, Vice-Chair. Would you consider your problem, Ms Ricketts, one of competition or one of simply dealing with an unfair franchisor?

Ms Ricketts: Part of it is competition in that the industry that I was in tends to have an average net sale value of between 13% and 18%, very small.

Mr Crozier: So the franchise you had was in competition with other businesses or other franchises of a similar nature?

Ms Ricketts: Absolutely.

Mr Crozier: Do you mind telling us what the business was?

Ms Ricketts: Computers, hardware and software.

Mr Crozier: Ah, OK.

Ms Ricketts: But what really put a strain on relations was that after eight years of operating, my lease had to be renewed with the mall. The mall insisted that I move my location to a space which was double the size that I had, and the franchisor made all the arrangements. Then after everything was put in place and signed, I went to the bank and the franchisor had forgotten to tell me that

small business development loans don't apply to the second store.

Mr Crozier: Conveniently forgotten to tell you.

Ms Ricketts: Yes. Scramble, you know, panic. This after having very minuscule returns. You'll find them there.

Mr Crozier: Is the franchisor you dealt with a solely Canadian corporation?

Ms Ricketts: Absolutely.

The Vice-Chair: Ms Ricketts, thank you very much for taking the time this morning. We appreciate hearing of your personal experience. Thanks again.

Ms Ricketts: Thank you for the chance.

1030

DIANE MEEUSE

The Vice-Chair: I'd like Diane Meeuse to come forward. How are you this morning?

Ms Diane Meeuse: Fine, thank you.

The Vice-Chair: You have around 20 minutes, Ms Meeuse. We can ask some questions in that period of time.

Ms Meeuse: First of all, I'd like to thank you all for giving me the opportunity to provide you with this letter which outlines my concerns regarding your investigation into formulating badly needed franchise legislation. Would you like a minute to read this outline? Like it says, I had a franchise for 10 years, and when the lease expired, all I got was a handshake, and that was it, even though they gave me a bad location and they admitted it. They said, "We're all in this together, so thank you very much."

I think we should have something to protect us. I was sort of a beggar for punishment. I didn't just buy one; I bought three. I only listed one here, but I bought two more, because at the beginning it looked like it was a good deal and sales were creeping up. I thought: "I'll give it five years. It should come up." Then they said they were bad locations. The one I mention here had a 10-year lease; the other ones had six. One was in Ottawa, and the other one was here in London.

Mr Crozier: Just one second. Chair, is there something written from the deputant? We don't have a copy.

Ms Meeuse: Sorry, I gave out at least 25 or 30 copies.

The Vice-Chair: Has everyone got a copy now? OK. Go ahead, Ms Meeuse.

Ms Meeuse: I also bought my franchise in 1989. It seems like it was a popular year for franchising. I asked them verbally when it expired. I knew it had a 10-year expiration date. They said: "Don't worry. Even if you die, it's going to go to your kids. You can't lose with us. You're a family member."

For the first couple of years, they seemed like normal, nice people to do business with. I was winning awards for getting the sales up and I was a wonderful person. But near the end they said: "We're not renewing the lease with this mall. It's nice knowing you. You are getting a little bit older; maybe you should retire. You have

grandkids.” I said: “I’m not ready to retire. Isn’t there any way you guys can help me? Give me another location or something?” They said: “No, you need another—now the fee is not \$210,000, it’s \$300,000. If you have this, maybe, but maybe you should look after the grandkids. Thank you very much.” That was it. I lost a lot of money.

The Vice-Chair: Three stores, did you say?

Ms Meeuse: I had one here in London that had a 10-year lease. Then I bought another one that had a six-year lease. A total of three, yes. One in Ottawa.

The Vice-Chair: In Ottawa, London and where?

Ms Meeuse: One in Ottawa and two in London. So you’re looking at a big investment and nothing to show for it at the end of 10 years of hard work. They said one was a bad location. The second one, they said: “The mall is being emptied now. A lot of stores are pulling out.” Actually, it’s the one across here, the Galleria. I had my daughter running the one in Ottawa because she lives in Ottawa. She said, “Aren’t you going to renew?” They said, “You might have another baby and you won’t have enough time to look after the store, so perhaps you should just stay home with your baby,” basically. So we lost that investment too. They bought her store for just the equipment, used equipment. What is it worth? Practically nothing. They sold it to another franchisee who was new, because they could bully him and tell him what to do and he would do whatever. They like that. They like new people.

In the location I had, the rent was 40% of sales. In any business you can’t make money if the rent is that high. I said to them, “Perhaps you should talk to the landlord and get the rent reduced.” They said, “Oh, we can’t do that.” But that’s OK. I understand that. Business is business. You sign up for a certain amount of rent, and the landlord expects that. When a mall is being vacated and there are a lot of empty stores, a lot of times the landlord will reduce the rent for you. But they weren’t one bit interested, because I was paying the rent and they weren’t. They only do things to help themselves, but when it comes to helping the franchisees, they’re not too generous.

I don’t know; I don’t really have a solution for the way they treat franchisees, but I’m not the only one who was treated like that by this company. More than 50% of the franchisees are not happy. But no one wants to say anything, because the minute you voice your opinion, you’re treated awful, and they don’t want that. I told them that since I’m out, I’m going to come out and say the way we are treated.

The Vice-Chair: We appreciate that. We probably have some questions here for you. Is that OK?

Ms Meeuse: Sure.

Mr O’Toole: Again, Ms Meeuse, I appreciate the story, the real dilemma of the individual franchisee. It’s important to make sure there is a framework of fairness. That’s ultimately what you’re aiming for. Would you say, though, that you were—and I’m not trying to say that you weren’t—adequately prepared or advised to

make that investment decision, or were you anxious to get into the business?

Ms Meeuse: No, I wasn’t really anxious to get into it. But they promised me a pretty good return on my investment and they said: “We’ll help you in any way. You don’t have to worry about it. All our stores make money.” After I was in it, I talked to a lot of franchisees when we were at meetings and found out that hardly anyone made money.

Mr O’Toole: That wouldn’t be fair dealing, perhaps.

Ms Meeuse: No.

Mr O’Toole: Did you actually have the \$210,000, or did you have to borrow it?

Ms Meeuse: I had the \$210,000, but I borrowed the rest from my father-in-law.

Mr O’Toole: I’m not sure if you’re familiar with the three provisions that currently exist in this proposed legislation. One is disclosure, which says, “This is the business plan; these are the rules.” Then there’s the whole issue of fair dealing, which I suspect some judge would say means what it says, for both parties. Then there’s the right to associate. In that, you could check the Web site—electronic disclosure—and you could do a lot of individual and collective research in asking other people, “How are you making out?”

Ms Meeuse: Yes. I asked them.

Mr O’Toole: What did they say?

Ms Meeuse: Before I got I into the system, they were so afraid to say anything against the system that they all said, “We’re doing just fine.” But now that I think about it, they didn’t actually say: “Yes, we’re making money. We’re very happy.” They just said, “We’re doing good.”

Mr O’Toole: “Come join us.”

Ms Meeuse: “We have fun with the customers.” They just changed it.

Mr O’Toole: They changed the subject.

Ms Meeuse: Yes.

Mr O’Toole: Thank you for putting a real face on this.

Mr Crozier: Did you actually have a franchise agreement that was signed?

Ms Meeuse: Yes.

Mr Crozier: So when Second Cup came along and suggested that your daughter go home and raise children and that they would cease the franchise, did you have advice that they were able to do this so flippantly, to simply tell you to go home?

Ms Meeuse: I didn’t think they could do that. But when we asked the lawyer about suing them, he said: “You don’t want to go up against a big company like that. They have a lot of money to fight it.” We lost a lot of money. We don’t have a lot of money to back us up right now.

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Mr Crozier: But your advice was that what wasn’t in the agreement would allow this company to simply get away with that?

Ms Meeuse: It does say that they don’t really have to renew after the time is up.

Mr Crozier: OK, so it was at renewal time that this issue came up.

Ms Meeuse: Yes. But verbally they don't say that. They say that even if you die, your family gets it. They tell you that verbally: "Your money is as sound as anything with us. Just come on board and you'll make money." They give you financial projections that show how much money you are going to make. Even in the worst-case scenario it makes money.

Mr Crozier: You spoke about the location, that their reason was the location was no good. Who chose the location at the outset?

Ms Meeuse: They do.

Mr Crozier: They do. So they come along after they have chosen a location and tell you that your location isn't any good, so for that reason they are simply going to take the franchise away and don't offer you an alternative.

Ms Meeuse: Yes.

Mr Crozier: That's unfortunate. This is one of those times when we are all trying to work towards a solution to prevent the kind of experience you have had from happening to others. Are you totally out of the business with Second Cup?

Ms Meeuse: Yes.

Mrs Boyer: Thank you. Just a comment. You talk about input, that you hope the input you bring to us will guide us in drafting good legislation. My colleague Mr O'Toole talked about disclosure, fair dealing and the right to associate. Do you have anything else that you would like to bring as a recommendation to this bill, or do the three main points in the legislation satisfy you and we can work on them?

Ms Meeuse: Basically, they want the franchisee to take the responsibility. But since they claim we are in this together, like a family, shouldn't they have some of the responsibility? They chose the wrong location and they got my money, so aren't we in this together? Shouldn't they give me another location?

Mr Tony Martin: Thank you very much. I recognize the nervousness—

Ms Meeuse: No, I'm not nervous.

Mr Tony Martin: I could understand it completely if you were.

Ms Meeuse: I got over it.

Mr Tony Martin: Good.

The Vice-Chair: You can really open up now.

Mr Tony Martin: Your story presents to me like a case of legalized extortion.

Ms Meeuse: Yes.

Mr Tony Martin: They see you with \$210,000 and they want to get it out of you, so they will tell you anything you want to hear. Then as soon as you sign the agreement and get into the business, it's game over, end of story. Were you here for the presenter before?

Ms Meeuse: No.

Mr Tony Martin: She ended up in a bad situation too. She thought she was part of the family. As a matter

of fact, she probably thought she was one of the favoured ones. You probably did too.

Ms Meeuse: So did I. I won a lot of awards.

Mr Tony Martin: Yes. You were the favoured one. Then when they decide that they've got as much out of you as they possibly can and they perhaps see another victim, they sort of leave you aside and then they send you a document.

Just let me read you a couple of the clauses in Ms Rickett's statement from the firm. Clause 1 says that she agrees never to take them to court. That is giving up fundamental rights. Can you imagine receiving a document from somebody that says, "I agree never to take you to court"?

Another one says that she and all her descendants give up any right to seek redress against them. How could you ask somebody to sign something like that?

Ms Meeuse: I wouldn't sign that.

Mr Tony Martin: It's unbelievable. It's legalized extortion.

Ms Meeuse: It is.

Mr Tony Martin: And we have here a bill that in my view simply puts a false face on a system that will be no more regulated after we put it in place than it was before. I think that would be doing the industry more of a disservice than just not doing anything. We are suggesting, by way of legislation that I have introduced, Bill 35, that among a lot of other things there should be some dispute resolution mechanism, someplace you could go and present your case, and the franchisor would have to come and present their case, and some third party arbitrator with no vested interest would deem who was right and who was wrong; if they want you out, at least recognize some of the investment that you made and the contribution that you made.

Ms Meeuse: If I were a bad franchisee, why would they sell me three stores? They weren't all sold at once. The second one was four years later, and the other one was five years later. Why would you give three stores to this lousy franchisee? It doesn't make sense.

Mr Tony Martin: I have a document here that I shared with a gentleman earlier that talks about some of the agreements that people sign. It says here:

"Franchisees should not assume that what is said by the franchisor during negotiations"—during the courting period for a franchisee—"will be reflected in the franchise agreement. Almost all franchise agreements include an integration and/or no representations clause. These clauses, ie, the 'I didn't say that' and the 'this is it' clause, appear to be routine but actually relieve the franchisor of any obligation to fulfil agreements made during the negotiations or to even acknowledge that any agreements were made other than those written in the franchise agreement."

This is the industry that we're looking at today. This is the industry that you were caught up in. We read the advertisements to come on and invest your money and this is turn-key and no problem, you don't have to have any experience, we'll teach you and all that kind of thing.

At the end of the day, what we end up with, for the most part, are more and more people like yourself who have been victimized.

Ms Meeuse: Yes.

Mr Tony Martin: So thanks for coming today.

Ms Meeuse: There's one more thing I'd like to say. After I bought the second location, later on the mall was kind of getting empty and they said, "We don't think we'll renew this lease with you, because the mall is not very busy, so we don't think it's a good location." But they went and signed with the mall for another four years after I left. One day I said to the leasing gentleman: "Why did you do that? You know it's a bad location. You wouldn't let me run it." He said: "You're from London and you know London. We're going to get somebody out of town to lease that. They won't know any different."

Mr Tony Martin: I rest my case.

Ms Meeuse: I thought, "My gosh, this is worse than extortion, what you're talking about."

The Vice-Chair: Diane, we really appreciate your time this morning and thanks for being so honest and up front with us.

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MARCH GROUP INC

The Vice-Chair: To the committee, there has been a little bit of a problem, and Mr March is going to go on here now instead of Mr Sovereign. They've agreed to trade places. So, Mr March, if you could take 20 minutes, please.

Mr Hal March: I don't have any handouts here. My name is Hal March. I'm part of a national franchise system. I have six locations. My problems are a little bit different than what you've been hearing so far, because I'm an ongoing operation. But I've learned some things the hard way, so I just thought I would give you a few comments about my situation.

One of the things I am concerned about is saying anything that could hurt my business or come back on me, so if we don't need to name my franchise, I'd rather not. We'll just call it March Group, which is my incorporated company.

One of the things I've learned very quickly is that if you don't go along then you can end up in some very serious fights with the franchisor, where they can make things very difficult for you or try to force you out of the system. I think you really need to have something in your new legislation that will allow franchisees to get together without any kind of repercussions from the franchisor. I've been involved with this particular system for over six years, and we have experienced some really bad times where it was important for us to get together as franchisees. I've been accused of being an organizer. At one point, they asked me to leave the system, and that was the reason cited: I'm an organizer, trying to get the franchisees together so that we could resolve common problems that we have. Our feeling has been that they

want to keep everybody separate, a sort of divide-and-conquer attitude about things, because if you get them together, then you have a stronger voice and it's harder for them to fight a group, but they can certainly fight individuals.

When I was listening earlier about people trying to avoid going to court, that's exactly what I did. When they asked me to leave the system, I avoided going to court because there's no way. I don't have the deep pockets of this major corporation, which at the time was owned by probably one of the largest corporations in the world, at least they'd rank in the top 50. How can you fight someone like that when you're just a private business individual? I managed to sort out my particular problems. I guess you find ways to get around them and continue.

But I think you should force the franchisors to facilitate a licensee group or a franchisee group so that they can meet on their own without feeling the pressure of the franchisor and try to help solve problems and make presentations together. That's really important. I think they have to be forced to encourage that. It's really hard. A lot of people like myself—what I ended up buying myself was really a job. I invested a bunch of money. I make less money than I made before when I worked for a company, but you learn those things and accept them as you go along. You don't have a lot of money in a lot of cases. A franchise system, I think they control it in such a way that you—they want you to make money, of course they do. They want you to be successful. But if they can control it so that they're always guaranteed to make money and you're just satisfied and can continue, I think that's what they do.

The next point I wanted to make was that I found, when I got into this, they had a 19-page franchise agreement with really fine print. I said: "I want to change this. I don't agree with that, I don't agree with this." They said: "No, if you change anything, then that's it. We just won't accept this. Everybody signs it." So I reviewed it with my lawyer, and he said, "If you want to get into business, you have to have a certain amount of trust, and I guess if everybody else in the entire system signs this, then go ahead." I signed my agreement and then I found out afterwards that in fact is not the case. There are different deals for different people across the country and who knows who, and when the companies changed hands certain special deals were made and that kind of thing.

I think you should obligate the franchisor to disclose those kinds of differences. If they're saying there's a standard contract, then tell everybody what is not standard in the system, that company A has a special deal because of this and company B has another special deal because of this and you are lumped in with everybody else and you pay on a different basis because of these reasons. I think that should be disclosed. It really hurts you if there are no negotiations and you're told that's the way it is. You have to have some confidence in the company that you're dealing with, that they're telling you the truth and that things are in fact fair and equal across everybody. But when someone else has an advantage, then it destroys the whole system.

The other thing, and I think it was mentioned again this morning too, is that there should be some way to resolve conflicts. We've tried in our franchisee organization to get them to help solve conflicts. I guess one of the biggest conflicts we had was when they asked me to leave the system. I called all the franchisees I knew who had any kind of influence with the company and said, "Here's what they've said." We more or less got a petition together, saying: "Are you nuts? Here's a guy you said has been your top franchisee for the last five of six years, and you want him to leave the system? What's that about?" It had to do with the organizing, that's why. It was only because of getting that petition together that they felt, "OK, we've got the rest of the franchisee body here behind this guy; let's make this problem go away." So I came back in the system and we solved our problems.

But there is nothing in place today to resolve any conflicts. Any time there is a conflict, they separate you and treat you as a one-on-one situation, and then when you start talking to other franchisees you find that your problems are common. I mean, you're running a similar system. It's a franchise system, and they're supposed to be the same. But there's nothing there to resolve those conflicts. So I think that's really, really important, and it has to be controlled by some outside party so that there's no undue influence by the franchisor.

The last point I want to make is about contracts. Mine wasn't quite as bad as the previous one, which said you couldn't take them to court. But mine basically says that all conflicts etc and/or interpretations are left up to the franchisor. So if there's an interpretation to be made on our contract, their decision is final. By the way, they can change the contract at any time, and you have to agree to it and live with it. So it's basically a contract that says, "We'll tell you what to do, and if you don't like it, tough." I think that's a very unfair kind of contract, because you don't know what's going to happen in the future.

I think the franchise agreement should have a lot more give and take, so that it's not one-sided and is there to protect the franchisor and the franchisee. A one-sided agreement doesn't work very well. You don't find out how well these things work or not until you have a conflict or that kind of thing.

One example I would like to cite about this area where things may not be fair is that I pay 8% of my gross revenue back to them just to have this name in place. They say that part of that money is for administration, which I understand—they have to provide for overhead—and part of it is for advertising. That's fine. Let's just say there is this lump of money that is supposed to be spent for advertising, so that you get the benefit of that back in your marketplace.

Well, in our system, many of the locations are still owned by the corporation. It's their choice. They've decided to run them and that's the way they want to run this. It tends to be the very large cities that they want to own. They take all the advertising money and spend it all

in their cities. Back in the cities where I run my locations, we don't get anything. I have questioned them about it, and so have other franchisees, and they say: "Well, we do spend the money. In fact, we spend more money than we have." When it comes time to question, "What goes into that advertising fund?" they won't give us the details.

We've had some meetings when we've had questions periods. We questioned our president about where the money comes from and where it goes. We have found out that they end up paying salaries to their own sales reps for their specific areas, those kinds of things, out of our advertising fund. If something is set up and the intent is for it to be used for advertising, then the money should be dealt out in such a way that it's fair for everybody. I think there needs to be something in there to make sure the franchisees are protected in those instances as well. Maybe you can settle it through conflict resolution or through making sure that certain clauses and phrases are in the franchise agreement. But it's just frustrating when you have to try to fight a corporate giant to get back money you have already paid them.

That is pretty much what I had to say this morning. I'm sorry I don't have any formal handout or anything.

The Vice-Chair: That's fine, Mr March. Do people from the Liberal caucus have any questions for Mr March?

Mr Crozier: Yes. Thanks for coming, in spite of the fact that you're concerned that someone, or your franchisor, would know you are here. I think the mere fact that you are reluctant to name your franchise goes a long way in speaking to why we need this kind of legislation. Some would believe that in this country you should never be afraid to come forward. Thanks very much for doing so.

In view of that, the one part of the bill that you mentioned that's interesting to me is the right of association. Again, I think any reasonable person would think you should never have any doubt about the right of association in this country. It's a little scary that you have to bring that forward. Again, it speaks to the need for this kind of legislation and, in my view, the need to make the legislation binding on the franchisor or, more important to the franchisee, because it brings the franchisor to the table, because in many instances they are large corporations. I appreciate the fact that you would take these steps under those circumstances.

I think you also mentioned conflict resolution. That would appear to be important to a franchisee, because oftentimes, in fact in many instances, you are small, independent business people. I have some understanding about what you're saying. Although I wasn't involved in a purely franchise operation, I operated a retail business where there was a marketing agreement. It was an independently owned business, but the type of marketing, the advertising and the style of the store were under a marketing agreement. So I have some appreciation of what you are saying, and I want to thank you for coming forward, notwithstanding the fact that there was some concern about naming your franchisor.

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The Vice-Chair: Thank you, Mr Crozier. Mr Martin.

Mr Tony Martin: I also want to do the same. I know we have had a number of people, very courageous entrepreneurs, come before us over the last two or three days pleading a case and asking for some relief in terms of some circumstance they had already experienced or were in. They weren't looking for undue advantage. They weren't looking for a playing field that was slanted in their favour. They were looking for some fairness, some access to justice and some return on the investment and work they put into a particular operation. I don't think that's a lot to ask.

To a person, franchisees have called for some kind of dispute resolution mechanism. We need to work with that little bit. Exactly what should that look like? There is some concern that we will introduce into the industry something that will be onerous and expensive and take away from a person's or a system's ability to actually do the thing they are good at, which is sell a product or service. We need to find some way of balancing that. I suggest there are ways, if people of good faith sit down around a table and try to come up with something.

Have you given much thought to the details or specifics of a dispute resolution mechanism that you think would work perhaps in your circumstance?

Mr March: It could be made up of the people involved in the process, as long as it has some way for people to vote on the outcome and is balanced. Maybe it's four people, two company representatives and two franchisee representatives, and they vote on issues, or something along those lines. It doesn't have to be terribly complicated or expensive.

Mr Tony Martin: I get the feeling from what you just said too, and this is another important point: the sense of balance and equity of power.

Mr March: There has to be. No one is going to agree to things if it's going to be one-sided. It doesn't make sense. It has to be win-win. If you're with a franchise system, you have to do things that are going to support that system too. Your investment is in that name, not just in your own franchise outlet but also in the entire name. So you want to make sure that whatever works is going to work for everybody and is beneficial. There's no sense in doing things that are going to make the franchisor go bankrupt.

Mr Tony Martin: There's some sense that this new piece that's tagged onto the court system now, which calls for mediation, would be a vehicle, although Professor Hadfield said to us yesterday that that's the first step into the legal system. So before you got to mediation, you would have to have had legal advice, put together a case and the adversarial system would already have begun. I suggest that as much as possible we would want to try to stay away from that and try to come up with solutions that, as you say, benefit both parties.

I also appreciated your comment on the right to associate, which is in this bill. I commend the government for that. I think it's a good move. But, again, how

far does it go if the franchisor isn't willing to recognize your right? You can associate as much as you want, but if the franchisor isn't willing to negotiate with you or sit down with you across a table and deal with the association, if they still continue to want to deal with individuals, then what's the point, as in situations like your own? I know there is at least some generic value in the right to associate—to get together, share, come up with some commons solutions and move forward. But it seems to me that we need to be looking at something in the legislation that forces the franchisor to actually recognize the association, otherwise—

Mr March: Yes, I see that point now. And you want to make sure that things are happening. I don't know how you would follow that up. I guess it wouldn't be an easy thing to do. I don't know if you would force them, so that in order to carry on a licence as a franchisor, or something along those lines, they're forced to sit down and have meetings with representatives from the franchise committee and the franchisor and send the minutes on to the government body, or whatever. I don't have an easy answer for that, but I see what you're getting at. It's a bit of a problem.

Mr Bob Wood (London West): Do you have any sense of what return on investment the franchisees in your system might be getting?

Mr March: I've been doing this for six years and this is the first year we've had any significant numbers of people who have been profitable. The return on investment is probably well under one tenth of 1%. Our business is fairly capital-intensive. That has some influence on it. Yes, it's pretty ridiculous.

Mr Wood: Do these people have to put in capital money up front?

Mr March: There are a couple of ways you can do it. Because it's so asset-intensive—you have to pay a franchise fee up front, yes. But that's not the most significant thing. In order to acquire the assets, you can lease the assets that are needed to make this work, but everybody in our system who is leasing assets is still continuing to lose money. They lease the assets from the franchisor. The others that have the financial ability to borrow the money to acquire those assets are probably making less than a tenth of a per cent return on investment.

Mr Wood: What sort of return did you expect when you went into it?

Mr March: That's funny. I got a pro forma made up which showed that I would probably make about a 15% return. I didn't draw a salary for the first 18 months I was in business. After that I've taken a modest salary, only at a mid-manager level, not someone who's invested a lot of money in a business. From that standpoint, it's a little bit frustrating. My business might be unique because of the amount of capital required to run it, but in a lot of cases what you're finding is that people are investing a big chunk of money in franchises and buying themselves jobs, and not high-paying jobs. Most people who are in their own business tend to work long hours. There should

be some protection against that kind of thing. I don't know how you deal with that. You have the same problem even with a cab driver. He spends all his money for his licence and his car and that kind of thing, but he's still making a little over minimum wage. I don't know how you get around that. There are other businesses with similar problems.

Mr Wood: I gather the return has fallen well below your business plan's expectations.

Mr March: Yes. We keep thinking it's around the corner, because it has been cyclical. That's the other thing they tell you: The business has been cyclical. They were making those kinds of returns in the 1980s, but it hasn't been here for the 1990s. Hopefully the new millennium will be a bit better for us. I realize I'm leaving you a little bit in the dark here by not telling you my franchise name.

The Vice-Chair: That's perfectly fine.

Mr March, we appreciate your taking the time to come and make a presentation to us today. Sorry about the mix-up in the time that happened.

LEWIS SOVEREIGN

The Vice-Chair: Our next presenter is Mr Lewis Sovereign.

Mr Lewis Sovereign: Thank you, folks. It's been an interesting morning. I just wanted to comment that my purpose for being here is that I am currently a franchise sales representative for a US company. In reading the article on this committee in the London Free Press, it's something that affects my livelihood so I thought it was my duty to come and make a positive contribution, if I could.

As far as the bill stands right now, the very limited scope that it's in right now, there is some boilerplate disclosure stuff that's very good. I see a bit of an interest here as to whether government should take some action. Maybe Mr Martin has the opinion that if we do, it somehow endorses franchising in general. There could be times when it would be interpreted that way and it could have an effect, so I suspect we do need to be careful as to what we do.

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As far as disclosure and association, I believe that good franchisors welcome it. The one I currently work for encourages both. We use a disclosure document currently given to all Canadian prospects 14 days ahead. We encourage an association and in fact provide incentive. The difference is, what we need to look at are some of the fundamentals of the industry, of the buyer and the seller.

I made two recommendations here that were not related to disclosure or association. One of the recommendations was that people starting up in the franchise business be required to post some sort of bond, especially when there are tangibles involved, like equipment and delivery of goods. How this helps is that it can provide some recourse and it puts some of the research into the

franchisor. It puts the onus on a person selling them a bond to do business.

Franchisors typically have an evolution in that they start out with a great idea and a concept, and maybe a guy has proven a great idea and like Henry Singer did in the 1800s, says, "Hey, the best way to get this out there quicker and faster is to franchise it."

In the beginning, a franchisor will be primarily capitalized by franchise fees. There is a curve, and sooner or later the return from his royalty or the retail sale of his product and idea starts to exceed his franchise fee. It's during that curve period that a franchisor needs to be scrutinized a little more in a bond process or some sort of—you saw these individuals who are up here who didn't have the ability to do their due diligence in the beginning. I did it myself. I sent US\$4,500 across the border for a satellite dish franchise eight years ago, and the next month when I called them, they were out of business. So I know the experience of being stung.

This idea of a probationary period for new franchisors in our marketplace is valid, given the scope and size of the Ontario marketplace to franchise in.

The next recommendation was that a portion of fees allocated to tangible goods be held in trust. If you look at what's happening in the courts—and this is what concerned me—a newspaper article in the London Free Press said that there are 5,000 court cases related to franchising in Ontario. To somebody considering buying a franchise at the time, that might be an astonishing number. The unfair thing about that statement is that it didn't go on to say that there were probably 17,000 cases before the courts involving independent business people on the same types of issues.

I think some of the concern today is more related to the entrepreneurial spirit in North America, the increase in independent business people, and not specifically franchising related. But there certainly are some things that we can do to address and make this particular industry more viable, because the statistics are that the franchise structure in the business community in North America today is a valid structure and actually increases the chance of success of an independent business person. You wouldn't think that, sitting here listening to people this morning.

Disclosure documents and disclosure in general is not the be-all and end-all. I realize we're just starting here. The problem with the disclosure issue is this: This is currently the disclosure document that we give out to people considering a franchise. Franchise buyers are typically in a transitional period in their lives. I give it to people for 14 days. I ask them for a receipt for it. I phone them up and say, "Did you read it and understand it?" The first person who says yes to me, 90% of the time I know right away it's impossible. I've read it five times in three years, and I don't understand it.

So there needs to be some system in place—and I don't believe government involvement. I believe a mistake they make a lot of the time is that they take it to their lawyer or accountant, and perhaps that individual special-

izes in a specific field, and he's not particularly qualified, but we tend to take people's advice in a profession based on our perception of that profession. That's a situation for an independent body to help the person.

The problem with disclosure is that it needs to be reciprocal. By "reciprocal," I mean that we also need to encourage franchisors to have their buyers offer proven disclosure as to their capabilities. It's an unfortunate old salesman's adage that buyers are liars. What happens to us sometimes is that we make a sale and somebody tells us they have a particular net worth or access to funds. Then, when I've taken their deposit and they've made application for the franchise and we start to go into the development process, I find out that they indeed did not have those funds, or access to them. Now, all of a sudden I'm in a tough spot as a franchisor. I've taken a deposit, I bore expense, I've maybe flown them somewhere for training or flown my engineers out to look at their sites and do site calls. Then we say to the person, "Gosh, you told us you had \$400,000, or access to it, and now you really only have \$250,000." Maybe we need to encourage franchisors to look a little more closely at the qualification of the people involved.

All the laws or things we do or pass are not going to prevent the people who enter the industry with ill intent. They don't care whether the guy is qualified or not. A thing I heard years ago: As long as they pass the mirror test, you could sell them a franchise, or sell them anything; it wasn't particularly franchising. It was that if you held a mirror up to their face and they fogged it up, if they were alive, you could sell. That mentality exists at all levels of the selling profession, in the business community in general. That mentality exists out there. So encouraging franchisors to better qualify their leads can still—again, this isn't disclosure. Disclosure is a benefit. If you're considering giving a large amount of money to someone who cannot get a bond in your business community, based on the delivery of goods or something, do you really want to give that person a lot of money? The primary benefit, to me, of disclosure is that it slows the person down.

People who are buying a franchise, who are in a transitional period in their lives, are making life decisions here. They're changing their whole life. Maybe they're getting the golden handshake from a bank or whatever institution they were involved in before. This is a life decision that should not be susceptible to urgent closing tactics of professional salespeople, or susceptible to just them following their dream. Gosh, I hear it all the time: "My wife and I have been working away at such-and-such jobs all our lives, but we always wanted to be in this industry. So we're going to buy into it. This seems like a shortcut way for us to do it." Of course, in many instances they are qualified, they do have the money in funds.

The other situation is that, like any other product we buy, we sometimes grow tired of a franchise. One of the problems with the franchise structure in that case is that all of a sudden you're an independent business person

and you start up on your own and you go out there and take that hard role, and if you succeed, wonderful; if you fail, you take responsibility, and that's it. You did it, you failed, you go on with something else. But if you do that in the same context with a franchisor relationship, then all of a sudden you don't look in the mirror as much any more. You have a big corporation there maybe, that you perceive has deep pockets that you can now have legal recourse against to help you with your losses. Certainly there needs to be some mediation process in place.

I've been hearing Mr Martin say that this is part of the legal process and that you're stepping them into the courts. But I think it's valid to have something in place to prevent half of these scenarios from going to court, primarily because these people are telling us they don't have the resources to go to legal battle. In some cases, we all know they're walking into court, having made commitments and signed documents and put themselves in a position where legally the courts are going to have no recourse but not to find in their favour. By getting to that in-court position, all they are is further in the hole and maybe more deeply hurt by the fact that they went the extra step, prolonging the agony.

I'm always pro prevention in all objections. One of the things I noticed from one of the ladies who was up here prior—I notice in dealing with franchisees that in the beginning, like in any business prospect in the beginning, they have a different mentality and perception than they do after they've had to get into it and roll up their sleeves and go to work. We need to encourage them more to realize what is happening in the beginning and to test them: Do they understand their payment process? Do they understand that they're putting up a \$10,000 or \$20,000 fee but their capital requirements are \$250,000? That's what they're going to have into it over a time period. I've always been amazed at the fact that I've told people that, and they come back and tell me they can do it better. I say, "Gosh, we've had a thousand people do it in the past 35 years and they couldn't do it better, so when you can do it better, please show us how." We need to ingrain in them that this is what it's going to take and then provide some step where the franchisor also has a better chance to look at them. We get them to fill out credit applications sometimes and they're not obligated to fully disclose. We are. We tell them, "Here's who's sued us, here's who's been with us for years, here's who's left." We give them full disclosure. They know everything about us, but sometimes we're at that position where we enter into business relationships with buyers that we don't know as much about as we'd like to.

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It all leads to this: What is the committee going to do or what is Bill 33 or 35, or whichever ones we implement, going to do to prevent the franchise buyer—protect the consumer, not hinder business development, because we want global franchisors to come into our marketplace and bring their ideas and create employment, all those things. But there needs to be more depth to the bill than

exists in its current state to make it something valid to the consumer and to the business marketplace.

Those are my comments. Any questions?

Mr Tony Martin: I must say, I appreciate your last statement, which is that the bill needs to be deeper and it needs to be developed further. I couldn't agree with you more. Anything that we can put in place today to prevent franchisors and franchisees from taking advantage of each other I think is going to be better in the long run for everybody concerned, particularly for the health of our economy. We've heard stories over the last three days, and some of us have heard them over the last five or six years. Some of us have experienced them ourselves in the lives of friends and neighbours. I came to this piece of work from my own constituents who brought me to a meeting back in 1995 and shared with me what was going on.

There are some things, though, that you've said that cause me to worry a bit. You've basically laid out a new twist on "blame the franchisee." The franchisees somehow, in your view, in some instances—and perhaps it is true—don't disclose everything. They say they've got \$350,000 and they only have \$250,000. I would suggest to you that anybody who has had to go out and borrow a little to prop up the money that you have yourself, the financial institution that is going to lend you that money is going to find out everything about you. I know in my own experience I've had to go to the bank to borrow. They knew the size of my shorts. It's amazing the things they know about me.

To suggest for a second that there's an imbalance there and that the franchisee is somehow to blame in terms of disclosure or is the cause of their own demise because they didn't disclose, I think is stretching it a bit. Nevertheless, I'm willing to give that in some cases it does happen.

But what I wanted to talk to you about even further is, you sell franchises. American franchises?

Mr Sovereign: We are a Canadian registered company as well, but yes, it was a company that started in the United States.

Mr Tony Martin: It seems to me, from listening over the last few days, that you're selling Canadians the American dream.

Mr Sovereign: OK.

Mr Tony Martin: And some of them have experienced what that's about—and we heard some stories here this morning—without the attendant regulations that many American jurisdictions have developed over some 30 years now. It was 30 years ago that California brought in a fairly comprehensive franchising regulatory regime. Here we are, entering the new millennium, and we're looking at what I would consider a very primitive limited disclosure, right-to-associate piece of legislation. You suggested at the end of your presentation that it needs to be fuller. Could you expand on that a little bit for me?

Mr Sovereign: Again, the disclosure—interesting comment—return on investment, those types of things, more depth as to what people disclose. I realize there are

financial statements needed in here. There are some other areas to address.

What I wrote down was that the issues that come before the courts have some common denominators. There are some issues that come up in franchising that are common problems. There's lack of capitalization, lack of management experience, non-delivery of goods. I think non-delivery of goods and people entering into the business and agreements with people they shouldn't be are part of the problem.

I didn't mean to put the onus or do a blame-the-franchisee thing, Mr Martin. I'm just bringing to light that in some instances that is the case. Although you say the financial institutions will find out everything about you, what happens in many instances in franchise structures where it's land- or finance-based, the financial institution also becomes part of the culprit. The reality in life is that the 80-20 ratio exists in all industries and businesses. Franchising in this world didn't change that; 20% of the people produce 80% of the productivity. That's just the way life is.

By expanding on what more needs to be in it, there are other issues and common problems that come up to franchise buyers. In the beginning they don't have the necessary resources to research the franchisor properly. They can't understand these large disclosure documents, or even smaller ones in many instances. I like the fact that there is a clarity requirement in this bill. I don't know who determines it. I found it rather amusing, a government bill that wanted to encourage clarity in the written form, and there are parts of it that were a little confusing to me. That's OK. It's a good thing.

There are common issues. If you look at all the franchising problems that have come before us, association with lease agreements—third party involvement with a franchisor is an issue. In the beginning, some of these people simply need advice to put some "subject to" in their other clauses. If there's a third party lease agreement, make a "subject to": "Should my franchise fail, or if my franchisor goes out of business and folds up and leaves me out of business, I need a 'subject to.'" I need an opportunity to get out of here, because this person is now in a jam with the third party. They signed a lease agreement but not a franchise—it's nothing to do with franchising. All kinds of business people in retail and any other thing get involved with lease agreements that sometimes they'd like to break and get out of. They need some better guidance in the very beginning to give themselves some flexibility.

In dealing with franchisees at the end, when they're coming to the end of their term, it always astounds me that these people have been involved with my organization for 20 years, and when I ask: "Have you read the termination clause? Do you know we have first right of refusal? It's 20 years ago that you bought it, so would you take a moment to go and read that?" they say, "Gosh, I didn't understand that." They need business planning in any term agreement. It's almost like estate planning. A person has to be prepared for what can happen at the end.

What can happen at the end is that the guy might have designed and wanted the ability to shotgun you out of there, so you need to know that up front. You need a little bit of testing when you go to buy a franchise. We used to give them tests: "Please provide us in handwriting what the payment structure is for our franchise fees." They'd had the disclosure document for months, they had the franchise agreement for months, but they couldn't copy out of it and put it back to me. So they didn't know; they didn't understand it. So you reiterate and try to educate.

The same with the end: "Do you understand what happens at the end of your agreement?" They need to know that up front. They need some clarity and they need some guidance because of the nature of both the franchisor and the franchisee. The typical franchise buyer is a person in a transitional period in their life. I think the longer I've been in the industry and the longer I've been in the sales profession, as with anything in life, you tend to get exposure to more situations and you start to see these things happening. "Gosh, here's a government committee coming to town that's going to do something about franchising in Ontario now." I welcome it and hope that we can make some positive contributions.

The Vice-Chair: A couple of quick questions here from the PC caucus.

Mr Wood: Do you have any sense of the rate of return on investment that your franchisees get?

Mr Sovereign: Yes, a little bit. It's an interesting case. In the particular product that I'm marketing right at this moment, is that what you're referring to?

Mr Wood: Yes.

Mr Sovereign: There are a number of ways to look at return on investment. What we advise people is that typically this particular product will outperform the rate of return on, let's say, a golf course, whether it's a 5%, 6% or 7% return. What we shoot for in one component of our investment, if they're getting into our industry in a particular manner, by converting a property or buying an existing property, is a 20% return on their initial investment, on their down payment.

The problem, Mr Wood, with a land-secured, equity-building lifestyle investment with my particular product is that part of the return on investment is based on equity. If we design their business on a five- to 10-year growth program and they watch it evolve from a particular low-end or start-up operation to a high-end operation, their property becomes more valuable. It's always easy for the salesman to provide a best-case scenario.

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Mr Wood: Maybe I should have given you some guidance. You've raised some important considerations. In terms of the money they put in—not what it's worth today—what kind of return would they expect and what kind of return would they get?

Mr Sovereign: It's probably going to run around what some bonds and lower-end investments do, somewhere between 2% and 6%.

Mr Wood: That's 2% and 6% of the money you put in?

Mr Sovereign: On average. Again, that's not a true case of return. If you look at land criteria and what they do—I've got an individual who advised me. He did three of them in 21 years and made a \$1 million on every one at the end when he rolled them over, because we instill some land criteria that cause the property investment to increase in value. So, what do you say to an individual up front? The fellow before me said, "Hey, these people buy jobs." Typically, to get involved in a franchise investment, they quite often have to buy a lower-paying job. "We're going to ask you to put up a quarter of a million dollars to make less money than you have for the last 10 years."

Mr Wood: The \$1 million comes on land appreciation?

Mr Sovereign: Land and business appreciation. Yes.

Mr Crozier: Thank you for your comments this morning. I think you've made some interesting recommendations in your proposal. The real test of committee hearings is to listen to suggestions and for either the government to accept recommendations and amend their legislation and/or for us in the opposition to propose amendments. I found all three of your suggestions rather interesting. Perhaps you and I can keep an eye on this to see if they make it into the legislation. Thanks for coming today.

The Vice-Chair: Thank you very much. It was a pleasure to have you here.

CANADIAN FEDERATION OF INDEPENDENT GROCERS

The Vice-Chair: We have a couple of cancellations, but we have a deputation here that is ready to make a presentation and I've asked them if they would do that. I appreciate the fact that they are: the Canadian Federation of Independent Grocers. If they'd come forward and do their presentation, that would be great. Is Mr Sands here the presenter?

Mr John Scott: He's the coordinator. He coordinated us and got us all here.

My name is John Scott. I'm president of the Canadian Federation of Independent Grocers. I'm past 50, so I have to use these glasses.

With me this morning is Peter Knipfel, chair of the board of directors of CFGI. He also owns and operates the Knechtel grocery store as a franchisee in Chesley. Also with me is Gary Sands, our vice-president of government and industry relations.

We appreciate the opportunity of appearing before you today, particularly since it is in reference to a long-awaited piece of legislation, Bill 33, An Act to require fair dealing between parties to franchise agreements. Ontario now stands poised to become the second province, after Alberta, to enact franchise legislation. Alberta passed its own bill, as you know, also called Bill 33 a few years ago.

The Canadian Federation of Independent Grocers is a national non-profit organization founded in 1962 to

further the unique interests of independent and franchised grocers through a progressive partnership with government, industry and the consumer.

From very modest beginnings in the province of Ontario, we now boast a membership of about 2,000 retailers located in every province and through most communities in the country. A board of directors of 18 regionally elected members governs us.

As I indicated previously, CFGV views Bill 33 as long overdue. It is probably safe to say that over the years the issue of providing some form of protection to franchisees has polarized both the industry and successive governments across the country. Indeed, Ontario will become only the second province, after Alberta, to have legislation enacted that governs the relationship between franchisor and franchisee. This is notwithstanding the fact that franchising is one of the most important economic activities in this country, certainly in the province of Ontario, where it accounts for almost half of all retail sales.

CGV believes that in this committee's deliberations on Bill 33, it is important that legislators always keep in mind the context in which many franchisees operate.

At the outset, the reality of our industry, as you've heard over the last few days, is that it is dominated by big business in the retail, manufacturing and distribution sectors. In this era of acquisitions and mergers, this trend is becoming more pronounced and is of increasing concern. Consequently, this power in the marketplace has created the potential for abusing the franchisor-franchisee relationship. And make no mistake, abuses have occurred. Many of the franchise agreements that exist are one-sided contracts that ultimately devalue the assets and investments of some hard-working franchisees.

In the absence of the ability of the franchise industry to appropriately self-regulate, it becomes the responsibility of government, as the agent of public interest, to provide the legislative framework for regulation. Just as important as protecting the interests of franchisees is recognizing that the \$40-billion to \$50-billion franchise industry in Ontario, which provides so much economic benefit to so many, is put at risk by the unscrupulous behaviour of a few franchisors.

The greatest difficulty encountered by franchisees with their franchisors usually stems from a lack of desire on the part of some franchisors to act in good faith. This has often led to an untenable situation for some retailers, and in recent years their franchisors have often unfairly forced them out of business.

Some observers have characterized many of the contracts that exist in the marketplace as feudal in their approach to the franchisor-franchisee relationship. As well, notwithstanding the substantial amount of personal funds invested by a franchisee, there is little or no protection in most cases where a dispute arises by consumer protection, labour or securities legislation.

In that context, there are two fundamental weaknesses in franchise agreements that allow abuses to occur. First, the concept of good faith or fair dealing is not embodied

in the agreement. By setting out fair dealing as a concept in Bill 33, hopefully both parties will now recognize the responsibility to observe commercially reasonable standards and act in this manner throughout the franchise relationship.

Secondly, franchise contracts are usually drafted in very broad terms that are one-sided and provide the franchisor with lopsided discretionary powers that are not conducive to the long-term development of a healthy franchise industry. Fairness, not fear, must be the backbone of our franchise industry.

Fear is generated when franchisees are forced to sign restrictive or controlling franchise agreements that limit their ability to manage their businesses as independent operators in the best interests of the consumer, or when retailers who do not sign new agreements receive arbitrary notices of termination or non-renewal in consequence. When franchisors unilaterally increase franchise fees and change pricing programs without either notification or any form of consultation, retailers are forced into new pricing programs that are profitable for the franchisor, but are neither profitable nor sustainable for many franchisees.

Fear occurs when franchisors locate new stores in the same marketplace as the franchisee they supply. Fear of economic retaliation should franchisees associate to discuss common areas of concern and, therefore, increase their potential bargaining power; fear due to not having been able to obtain disclosure of all material facts before purchasing a franchise; and fear that in order to resolve any dispute, a franchisee must weigh the cost, time and uncertainty of litigation.

That is why we welcome and support Bill 33. We see the major achievements of the bill as the creation of three new rights: most importantly, the right to expect to be dealt with fairly, the right to associate with other franchisees; the right to obtain disclosure of all material facts before purchasing a franchise. The need in the marketplace for such legislation is clear and deserves all-party support.

We do believe the bill could be stronger in defining fair dealing. CFGV has difficulty understanding why the legislation cannot simply say that fair dealing means the observance of commercially reasonable standards and manner throughout the franchise agreement. Given that the burden of any litigation to resolve a dispute falls more heavily on the franchisee, we suggest that a definition that provides more clarity ensures that we provide a better balance between the interests of both franchisor and franchisee.

Society embraces the concept that consumers should be dealt with fairly and, consequently, must be able to understand fully and clearly the details of their transactions with suppliers of goods and services. CFGV sees no reason why the relationship between a franchisor and a franchisee should be exempt from a similar approach.

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We wholeheartedly support the other main provisions in the legislation, which provide franchisees with the

right to associate with each other and to join or form an organization without restrictions imposed by franchisors, and, most important, the disclosure obligations now imposed on franchisors.

While some have criticized Bill 33 for not going far enough, CFG believes that having this legislation passed is vastly preferable to indefinitely delaying protective legislation because the industry cannot reach agreement on each and every clause of the bill. On a contentious issue such as this, it is doubtful that any legislation could be drafted that would satisfy everyone in the industry. We also recognize certain political realities. This issue has polarized successive governments and the industry. Asking for substantive amendments at this stage would probably kill the bill outright. It has been said that a journey of a thousand miles begins with a single step. CFG believes that the passage of Bill 33 in Ontario is an extremely important step in providing some balance between the interests of franchisors and franchisees.

It is also an important strategic step in ensuring franchise legislation is enacted in each and every province across Canada. Two provinces have already indicated to us that, in the interests of interprovincial harmonization, they are awaiting passage of this legislation to determine if other provinces intend to base their legislative frameworks on the current Alberta Franchise Act. Our journey across the country will begin the moment this bill passes into law. We will take the Alberta and Ontario legislation to every provincial government and demand similar protection for their franchisees.

In conclusion, CFG supports the act before you and we urge, in the strongest terms possible, speedy passage of Bill 33. We commend the government of Ontario for reintroducing this legislation. Thank you.

The Chair: Thank you very much. The government caucus, Mr Gilchrist.

Mr Steve Gilchrist (Scarborough East): Thank you very much, gentlemen, for your presentation. I appreciate the perspective you bring and the fact that you represent such an extensive range of business interests across Ontario. I also appreciate that you recognize that we operate in a bit different framework in the political sphere. I'm very encouraged from what we've heard so far from all three parties in terms of their support for the principles behind the bill and a recognition that there has to be a starting point somewhere. We will continue to have discussions on how big that first step will be.

In that context, I was wondering if you had seen the five or six amendments we have most recently seen discussed by the working group.

Mr Gary Sands: No.

Mr Gilchrist: When you do, perhaps you might want to comment if any of these do or don't pass the test from the grocers' perspective: expand the right of action for misrepresentation to include any agents or brokers involved in the selling of the franchise; permit electronic disclosure, for example, if you wanted to download your disclosure document from the Web; require disclosure for the sale of an additional franchise to a franchisee if a

material change had occurred in the relationship or in the franchise agreement since you first signed on; require disclosure for the renewal of a pre-existing franchise agreement—as the act is written now, it wouldn't apply if you are currently a franchisee and your 20-year term has run out; and clarify the term “payment” in the definition of franchise to include indirect payments.

Are those all things you would see as further strengthening this bill and further improving the protection for franchisees, and consumers indirectly.

Mr Sands: We think those would be good amendments. We haven't had a chance to look at them, Steve, and we would like to review them. At first blush, they certainly sound to us like they would strengthen the bill. We would be happy to look at those amendments and formally respond to you when we get back. If I could take a copy of them with me, that would be great.

Mr Gilchrist: We'll make sure you get them.

Mr Sands: They certainly sound like they would strengthen the bill.

The Chair: The Liberal caucus, Mr Crozier.

Mr Crozier: Thank you, gentlemen, for your presentation. I guess you understand, as we all understand, that in a sense there is all-party support for this. It was supported by every party at first reading, and I think all of us have the same objective in mind of the need for this kind of legislation.

I might ask if you'd expand just a little bit because I'm surprised that you have made the suggestion that substantive amendments at this stage would probably kill the bill outright. The whole idea behind committee hearings—we might as well not waste our time, quite frankly, if we're going to ask people to come before us and then not listen to them; in other words, not make amendments. A bill such as this isn't worth the paper it's written on until it's tested, so you might as well try and get it right. Because what you're telling us, I believe—and maybe you can comment on this—is that this isn't as good as it might be but it's OK and that we'll go ahead and pass legislation that's so-so rather than try an amendment. I hope I'm not getting that message. You can clarify that for me.

Mr Sands: I think what we said in our closing is a reflection that we recognize certain realities, that this issue has polarized a number of governments, including the Liberals when they were the government and the NDP when they were the government. We know that within the industry there are various views on this legislation. Some people would not like to see any legislation at all.

As we said in the presentation, we believe this is an important starting point. We have no legislation, even in draft form, in most of the provinces across this country. We want to start somewhere to start building legislative protection across the country. We intend to come back to seek amendments and give this bill a chance to work and see where it goes.

I think John wants to add something.

Mr Scott: Don't lose sight of the fact that the commercially reasonable standards is an amendment that the CFGI, like many others, would very much like to see in this bill. Your concept of fair dealing doesn't have a whole lot of use without that amendment. We'd like to see that happen. Secondly, if you were going to go to a far-reaching bill and they were in power—perhaps Mr Martin's bill encompasses all of the elements that a franchisee would like to see. But in making the statements we have that we'd like sure like to see an amendment on the commercially reasonable standards, we're reflecting what we believe is a political reality in dealing with the government. Again, we commend the government, particularly this government, which has not gone into regulation regarding business, for bringing it forward.

Mr Crozier: Sure. Some would suggest, though, that once legislation is on the books, it's just as difficult to get it amended as it was to get it there in the first place. So my point is the old saying, "When the going gets tough, the tough get going." If it takes time and it's tough to get the right bill in place, let's do it now. That's all.

Mr Scott: We've been after this for seven years. There are people in the audience who are well aware of our activities for seven years.

Mr Crozier: Let's not take something that's half-baked—

Mr Scott: Then make an amendment on commercially reasonable standards and it might be helpful.

Mr Crozier: Good. They're the guys who are going to control this, so as long as they understand that.

Mr Tony Martin: I also thank you for coming forward and making the presentation you have. I understand the anxiety that you hold to get something in place. I am like Mr Crozier, though, just not wanting to put something in place that gives people a sense of security that really isn't there.

You mentioned the fair dealing piece that really doesn't say anything. People think, when they sign on, "There's legislation that protects me; they have to deal with me fairly," and then five or six years down the road, when they end up in trouble, they find out it doesn't mean anything. I don't want to do that to people. I don't want to set people up for failure in that way. That's why I was insistent on this bill going on the road, so we could hear from—the working group was limited in the people it heard from. We needed to hear particularly from the franchisees out there who are experiencing some of the reality of the business world today. And we have, in spades, over the last three or four days, and we will continue to for the rest of this day.

My question to you though is, this is a bill that's gone out to hearings after first reading. It allows for a greater scope. We're not tied to a principle here and we can talk about all kinds of things. I would suggest to the government that maybe some other material be brought to the table, that some other efforts be made to understand the circumstances that people find themselves in out there.

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We've heard so far in our deliberations that the grocery industry is in great flux from a number of different perspectives: farmers who can't get their product onto the shelves, small producers who can't their product onto the shelves, grocery stores whose ownership has changed, who now are looking at having to sign new agreements that aren't in keeping with the spirit of the original agreement. I know in my own community we have three grocers, who were some of our best corporate citizens, and they're not in the grocery business any more. I'm not sure where some of them are. One of them is now running a bingo hall. These were people who contributed in very serious and meaningful ways to our community. The fact that small producers can't get their product onto the shelf at some of the major grocery chains is killing the economy of some of the regions of northern Ontario and that's a worry to me.

With that in mind—and I don't know if you've given this any thought or not—what else could we do here? What other information could we bring to the table that will be helpful to us in perhaps resolving some of the issues particular to the grocery industry at this point in time?

Mr Scott: You're right. The grocery industry is in a state of great flux and we're very, very pleased to see the number of franchisees who have come forward, and you're going to hear more today from our particular industry. There is a lot of pressure on a lot of people right now.

I just want to pick up on your last point. I know you've heard from primary producers and people who traditionally sell into grocery stores. I submit to you with great respect, sir, that most of the arguments on that don't come under the franchise situation but rather under the Competition Act and the issues of tied selling, which is something that perhaps this government can't look at, but something you ought to have a look at.

The Vice-Chair: That has been raised this morning by Mr O'Toole.

Mr Scott: Anyway, sorry. Peter, do you want to respond to any of the comments on the industry?

Mr Peter Knipfel: Just from a franchisee's perspective, in our industry this is our primary asset. This is what we've invested our money in to hopefully see us through to retirement. With the consolidation today in the grocery industry and the control that the franchisor has over the franchisee as far as pricing and our profitability is concerned, we need some protection for some fair dealing with our franchisor. That's basically all I have to say, that that's what we'd like to see.

Mr Tony Martin: Do I have time for—

The Vice-Chair: You've got five seconds. That does include your preamble, though—your normal preamble. Go for it.

Mr Tony Martin: I recognize the common commitment around the table to looking at the Competition Act and challenging the federal government, and we'll probably have this discussion further, but our jurisdiction is

provincial. That's where we have control. We're dealing with the provincial government. Is there anything we could do to be helpful in that piece? We have a Ministry of Consumer and Commercial Relations.

Mr Scott: On that particular one, on the restrictive selling issues, I believe—in fact I know—that the Ministry of Agriculture, Food and Rural Affairs has discussed it with some of the major grocery chains and has some similar concerns. I do not believe that any representations have been made by this government to Ottawa, but there has certainly been a tremendous amount of representation made by the smaller processors and producers directly to the Competition Bureau on the issue. It is a big concern for our own retailers, as you can imagine, because they're supporting the local economy and all of a sudden they're precluded from that. It's a very difficult situation.

I don't know what else you can do there, because it's federal legislation. But I do know in this situation, as Peter says, doing something on the "commercially reasonable" thing would be huge in this piece of legislation. Huge.

Mr O'Toole: On a point of order, Mr Chairman: If I may, just respectfully to the comments you've made, if you have a position that outlines what you've said, it would be important for that to be on the record, engaging not just the Ministry of Consumer and Commercial Relations but the Ministry of Agriculture, Food and Rural Affairs, as well as the federal government.

Mr Tony Martin: Yes.

Mr Scott: I think that would be productive, to recognize that the agricultural sector industries have commodities and supply management issues that are removed from this legislative framework. Your industry has made the supply issue a significant issue in the hearings this week. I appreciate that.

Mr Crozier: On the same point of order and just very briefly, it's interesting that the whole idea of franchising itself goes to the point of competition. If we really got to the very bottom principle of it, franchising would be no more than a name on a store, because you should be able to be free, under competition rules, to buy from anybody, but we know that's not the case with franchisees. McDonald's supplies the patties, I suppose—I don't know. It's an unfair example. But if you really went to the very principle of competition, you wouldn't have franchises, because that in itself restricts a franchisee from doing certain things. That's all.

Mr Scott: Franchising is a big part of our industry, and what you're trying to do is shepherd franchising into the next century in a productive manner. I think that's what we're all trying to do here.

Mr Crozier: I think we all are, for sure.

Mr Scott: I'm not sure, but was I bothering you with my comments?

Mr O'Toole: Oh, no. I think they were very productive comments. I mean that genuinely. If you have a position as the independent association, I would like to see that.

Mr Scott: OK. We'll provide you with that. The various ministries are well aware of our discussions.

Mr O'Toole: I'm sure they are. It's part of the public record here.

The Vice-Chair: Gentlemen, thank you so much for your time this morning, and thanks for moving your time ahead.

If I could have the committee's indulgence for just a moment, the previous speaker, Mr Sovereign, made a statement and he'd like to make a clarification. Would anyone mind if he took a minute to do that? Mr Sovereign, you've got a minute.

Mr Sovereign: I just want to take a brief moment here. I was asked by a committee member as per a specific return on investment, and I'd like the opportunity to retract that statement. I gave you a percentage number based on a recent conversation with someone else involved in the company. A more honest and accurate answer is, I don't know, sir. I don't know what the exact returns on investment are. The proper and ethical thing for a franchise salesperson to do when asked questions specifically pertaining to return on investment is to refer the person asking the question to the uniform offering circular, which I do have a copy of here, and if Mr Chairman would like, I will leave a copy for the committee for copy and distribution, or if Mr Wood would like, I can leave it for him. Is that OK?

The Vice-Chair: That would be fine.

Mr Sovereign: Would you like this, sir?

Mr Wood: Well, just give it to Ms Stokes.

The Vice-Chair: Thanks for that clarification. We'll now adjourn until 12:55. That should get us here by 1.

The committee recessed from 1156 to 1304.

CAMERON'S FOOD MARKET

The Vice-Chair: Ladies and gentlemen, I'm pleased to call the meeting back to order. Our first presenter this afternoon is Cameron's Food Market. Mr Cameron, please feel free to start whenever you wish.

Mr Bill Cameron: Mr Chairman, honourable members of the committee, ladies and gentlemen, I would like to thank you for the opportunity to appear before you today to make this presentation regarding Bill 33, a most important and desperately needed piece of legislation.

With me today is Bob Uhrig, a Knechtel franchise store owner and co-chairman of Western Ontario Grocers Alliance. This presentation is not only about my personal experience but echoes the concerns that Western Ontario Grocers Alliance has with franchisor activity in Ontario today.

My name is Bill Cameron and, with my wife Diane, I own and operate an 18,000-square-foot franchised food market in Kincardine, a town on Lake Huron with a population of 6,000. We have owned and operated a Knechtel franchised food market for the past 16 years. We presently employ 17 full-time and 48 part-time employees. The business is operated as Cameron's Food

Market, under the Knechtel banner, which is a franchise of Sobeys Capital Inc.

It is important to mention that today our business is very successful, even though we are competing against a larger National Grocers' Zehrs store, which is corporately owned and operated. Each year over the past four years, Cameron's Food Market has been awarded a Canadian Federation of Independent Grocers, CFGI, award of merit, which recognizes outstanding independent grocers in Canada.

I am also the secretary for Western Ontario Grocers Alliance, which is a registered, non-profit corporation created in July 1999 to represent the interests of 64 Knechtel franchise owners in Ontario. This alliance was formed by the Knechtel franchisees to collectively deal with some very restrictive agreements that were being arbitrarily imposed by Sobeys this past spring.

We believe this provincial government needs to be congratulated on their resolve to implement some form of legislative control over the manner in which franchisors carry on business with franchisees. This type of legislation is long overdue and will address some of the pre-sale abuses, especially in the area of pro formas and disclosure. For this government to recognize, through Bill 33, the right of the franchisee to associate and share information and ideas that are of common interest without fear of retaliation is extremely important to the members of Western Ontario Grocers Alliance.

At this time, I would like to relate to you a personal experience regarding my association with our present franchisor. In the beginning, our store was associated with Knechtel Wholesale, a family-owned business operating out of Kitchener. This association flourished, due largely to the common belief that honesty, integrity good principles and fair play were the rules that would ensure the success of both businesses—the retailer and the wholesaler. Our Knechtel franchise in Kincardine, as well as those in many other communities, operated successfully and harmoniously with Knechtel Wholesale, with nothing more than a handshake to consummate their business relationship. In 1993, Oshawa Foods bought Knechtel Wholesale, and it appeared at that time the expected rules of business that the Knechtel associates were accustomed to would, for the most part, be retained.

On April 1, 1996, we executed a business transaction with Oshawa Foods where we signed a trademark and franchise agreement and a sublease for the premises, with an initial term of 11 years, expiring in the year 2007. Also, in return for a substantial loan of \$585,000, we signed a general security agreement and loan agreement: \$415,000 was used to buy the remaining 25% ownership of the business, and the remaining \$170,000 went to a major renovation of the business. Diane and I also signed personal guarantees for all the obligations of the store to our franchisor and to our bank. The term of our loan is 10 years. It would be retired in the year 2006.

The success of our business, due in part to the trusting relationship we had with our wholesaler, enabled us to purchase full ownership of the business. The total price

paid was approximately \$1.8 million, which was viewed as fair market value. When we first bought the business in 1988, and when we borrowed the money to finish that process in 1996, there was a well-understood but unwritten commitment by Oshawa Foods, and prior to that, Knechtel Wholesale, that they would not compete against their own retailers, who had invested large sums of money in their markets. As a result of this, the value of the stores was significant.

In December 1998, Sobeys purchased Oshawa Foods and in doing so became our franchisor. Sobeys obviously inherited all the agreements we signed and also our outstanding loan. I would also have thought they inherited Oshawa's business deals and the intent under which they had been agreed. However, this was not the case. In November 1999, we invested a further \$100,000 in our business for new refrigeration counters. The installation and setup of these counters involved Sobeys's engineer and store support personnel.

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On December 1, three weeks after the installation was completed, Sobeys announced to us they had secured property within our community and they would be constructing a 35,000-square-foot supermarket under the IGA banner. They also informed us that this store would be a new entity into our market, and that it would not only compete with the existing Zehrs store but would also be a new competitor for our Knechtel franchise. Sobeys's rationale was that if they didn't do this project, our existing competitor would have done it, and they would have hurt us even worse than Sobeys was going to hurt us.

At a meeting with senior executives of Sobeys, I was assured that fair dealing would be the main ingredient in producing a win-win solution to our situation. Needless to say, their subsequent action of offering to buy our business for less than 50% of our initial purchase price did not demonstrate even an attempt at dealing in a fair manner. In the January-February edition of the Canadian Grocer magazine, it was reported that Sobeys's position on competing directly against their own franchisees is: "Sobeys says, in such an unlikely case, it would pay support to protect the independent business. If the business still suffered, Sobeys would buy the business." Obviously my question is, for what price?

These predatory actions of exploiting the weaker position of the franchisee happen only because there is a lack of legislated controls over the franchisor to respect and protect the franchisee's trading area from acts of encroachment. The potential of this encroachment has severe and direct financial costs to the franchisee by drastically impairing their ability to sell their franchise for fair market value.

In many cases, franchisees are left only with the option of having to consider a fire sale price offered from the franchisor. The value of independent retailer stores has declined significantly because of this current policy of the franchisor of expropriation without compensation. Their ridiculous offer to purchase our business is a testimonial to this policy.

Another alternative is for us to stay and try to compete. In our case, however, even the study performed by Sobeys's marketing department showed that our volume of sales would be so negatively impacted by the entry into the market of the new IGA store that we would be losing money if we continued to operate. Even today I struggle with Sobeys's lack of understanding of why we feel so betrayed.

How do I answer the following questions? How will we deal with our lease and loan obligation to our franchisor when we no longer can service them? What about the fair market value for the equity that we have worked so hard for over the years, and were led to believe by our previous franchisors would be realized when it was time to sell? How and why can a franchisor treat their franchisees in this manner without any outside scrutiny?

There are some who say that civil action is another option. However, not many franchisees enjoy the financial position to venture down this lengthy path. Taking on a large franchisor who has unlimited resources of money and legal ability is viewed by many as foolish. One has to remember that by the time the process of civil action is finalized, the encroachment has already happened and the damage has already been done. At this point, the likelihood that the franchisee is already experiencing financial distress or even bankruptcy, unable to present or continue a challenge, is highly probable.

The franchisor controls the cost of 95% of products purchased by the franchisee, and they control the retail price which the franchisee sells these products for. Ultimately, they control the franchisee's profitability. Independent retailers over the past year have seen a significant decline in their ability to turn a profit, while franchisors have continued to increase the cost of goods sold to them. As a result, the franchisee, with strict expense controls and good store operations, is left to depend only on the franchise program to deliver a marginal but controlled level of success to their business.

When put into a position where the franchisee is losing money under the franchisor's program, what the franchisor says they will do is inconstant with what they really do. They say that they will subsidize the franchisee, but they do this only after the franchisee's equity has been destroyed and they have become totally indebted to the franchisor. This new IGA franchise in Kincardine, according to Sobeys, will be subsidized many hundreds of thousands of dollars per year until the franchise becomes viable. This is done as a matter of policy. However, in our situation of this territory encroachment, no subsidy has been offered to ensure the continued success of our Knechtel franchise. This is a franchisor that is prepared to give preferential treatment and an unfair advantage to one franchisee over another in the same trading area.

When you consider the contents of this presentation, please view it as only the tip of the iceberg. Since Sobeys's acquisition of Oshawa Foods, they have initiated an aggressive corporate expansion policy even

against their own retailers. I know of no less than three other Knechtel franchisees that could at this moment be sitting here and giving a similar account of events they are facing in their own communities today.

It is apparent that when a franchisor decides to become aggressive in expansion to maximize their penetration in the marketplace, even if encroachment is a necessary tactic to accomplish their goals and ensure their own success, fair dealing is expendable. As put to me by a senior executive of Sobeys at a recent meeting: "If a franchisee is not prepared to expand or invest what we believe is necessary to secure our market share, they will be run over and discarded." I believe this says it all, and confirms that franchisors have shown an intent on dealing in an unfair manner, and their behaviours are prime examples for the necessity of strengthening Bill 33.

If this process of eliminating the "in" on the word "independent" is allowed to continue, not only the future but the very existence of thousands of small producers across Ontario will be threatened. Because of the outrageous listing fees charged by the wholesalers, which could equal \$130,000 per stock-keeping unit, they will be unable to afford to sell their products to the large major supermarket chains. Due to the restrictive agreements to which the franchisors are forcing their franchisees to adhere, the local independent retailers or franchisees will not be allowed to buy from these small producers on a direct basis, even if the costing is better than what is available through the franchisor. In the end, we will have an obstacle to fair competition, and when complete control over the retail market is realized by the major franchisors, who, by the way, are also the major corporate players, higher retail prices for the consumer are a certainty.

I am concerned that under the definition for "fair dealing," the tactics we are facing in Kincardine and other communities would qualify as a breach of Bill 33. If not, then the discretionary powers which are heavily weighted in favour of the franchisor through one-sided franchise agreements will continue to be abused. I and the Western Ontario Grocers Alliance prefer to see a clearer definition of what "fair dealing" really means, with the hope that a clearer definition would include a reference to scrutinize "trade area encroachment."

"Fair dealing" should impose within the act an enforceable legal obligation on wholesalers and franchisors, who are also competitors of independent retailers or franchisees, to act in a "commercially reasonable manner" where they exercise discretion that could affect franchisees adversely. The franchisors say they already do this and that it is only good business to treat the franchisee fairly; therefore, to amend this bill to define "fair dealing" to reflect the franchisors already admitted good treatment of the franchisee is only a modest request.

The Vice-Chair: You've just got a couple of minutes left.

Mr Cameron: If the existence of this law was in place today and addressed meaningful penalties for its breach, I

would not be sitting here in front of you on the verge of losing my investment or, even worse, my business.

In conclusion, the franchisee or independent retailer has had no legislative protection; however, Bill 33 provides some and is a basis to build on in the future. We strongly believe it will send a clear message to the franchisor that fair dealing will be a major component in their business relationship with their franchisees. The passage of this legislation with a defined and enforceable "fair dealing" provision is long overdue, and we strongly recommend that this government of Ontario pass Bill 33 into law as quickly as possible.

Mr Chairman, honourable members of the committee, ladies and gentlemen, again we thank you for the opportunity of appearing before you and we look forward to answering any questions.

The Vice-Chair: We've got time for about one quick one. Has anybody got a fast question? Tony?

Mr Tony Martin: Yes. I don't want to in any way diminish the seriousness of your presentation. We've heard this story now several times over the last three or four days. I'm into this piece of work because of similar stories in my own community of Sault Ste Marie. There are three grocers no longer doing business in my community—wonderful corporate citizens, did the whole nine yards and they're out of business now. I believe there's a fuller inquiry called for here into this industry. It seems to me that having two entities control 80% of the distribution of product is problematic, at least in the grocery industry. Would you support such an inquiry?

We're dealing with this bill after first reading, so the scope for us is quite large compared to after second reading, where you have to stick to the principle of the bill and follow that through. We can make recommendations to the minister and the ministry on things we hear that will be helpful to us in the end in putting together a piece of legislation, or developing or crafting a piece of legislation, that would go the full distance. It seems to me there's more to be said, more to be found out and more information to be had around the circumstance of the food industry in Ontario at this particular point in time.

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Mr Cameron: Yes, I would support it. However, the Competition Bureau ruled to have 80% of our food distribution controlled by two people. My problem is that at the present time I'm still a very viable and very successful retailer, but I'm on the verge of seeing that go away on me, seeing my investment destroyed on me by an aggressive and dominant wholesaler and franchisor. If this law had a definition for fair dealing, I would have something to be able to fight back with. At this point in time I have nothing other than civil action, and civil action is an extremely lengthy and expensive process.

The Vice-Chair: Thank you very much, Mr Cameron.

Mr Bob Uhrig: Could I have 10 seconds?

The Vice-Chair: Yes.

Mr Uhrig: On behalf of the Western Ontario Grocers Alliance, which was forced to become viable some time

ago through our situations with Sobey's, I just wanted to quickly define the environment today. The minister has alluded to it here, that 80% of the distribution is in two people's hands. In the last six months we've seen a tremendous need for fair dealing, in today's environment when everything is controlled by the franchisor. In the changes, as an example, that Sobey's wanted to make with us, there was no fair dealing involved there at all. That's my point.

The Vice-Chair: We appreciate your time. Thank you.

Mr O'Toole: Just on a point of order, Mr Chair: Do they have a written submission?

The Vice-Chair: No, they don't.

Mr O'Toole: You read from a script. I would appreciate getting a copy of that script.

Mr Cameron: OK. I have an extra copy.

Mr Tony Martin: On a point of order, Mr Chair: This is the last day that we have together as a committee. We've been sitting and listening for four days now and we've heard some very valuable information shared. We've heard some very compelling stories, and I'm wondering, given that there was some hope that going to committee after first reading there would be some scope for us to recommend or suggest some things that could be done by ourselves or the ministry or others to help us bring forward for second reading a bill that reflected some of the discussion and the recommendations that we heard, at what point today—because I think we need to do it today—would you suggest that those of us who have some recommendations to bring forward and put on the table actually in fact do that?

The Vice-Chair: Let's see how the schedule goes here, because we've got time constraints with some other things here as well. That wasn't part of the agenda today.

Mr Tony Martin: Although we did, I think when we spoke at subcommittee, suggest that there might be some time at the end of today to talk about where we go from here. There was a suggestion, for example, that we might want another day of hearings when the House comes back.

The Vice-Chair: We could take a couple of minutes at the end, though, and look that over.

Mr Tony Martin: Yes. We've heard some very serious concerns raised, and in the interests of time, for us not to deal with that or at least reflect an interest in dealing with that I think would be unfair. For us not to honour the effort that was made by so many of the presenters, some of them at great risk to themselves to come here by taking time to do that, I think would be a shame.

The Vice-Chair: I don't think it necessarily has to be done today, though. If it's something that's going to take two or three hours today, that's probably not in our agenda.

Mr Tony Martin: I don't think it will take two or three hours, with all respect, Mr Chair. But it seems to me if it's not done today, we don't meet again until the House comes back. Right now it's scheduled to come

back on April 3. There will be a lot of things happening when we come back, and when we will get to this—

The Vice-Chair: Let's just get on with the meeting, and we'll see what happens as the rest of the meeting goes on.

Mr Tony Martin: So you're telling me that we're going to try to find some time at the end of today to do it?

The Vice-Chair: Depending on how the schedule goes. I'm trying to keep the meeting to a schedule, as the agenda says.

Mr Tony Martin: We've had a number of people not show up today, so we should have some room, it seems to me, to do this. I become very concerned when I feel like—

The Vice-Chair: Yes, we understand your concerns; you've mentioned them all day.

Mr Tony Martin: I'm concerned that you may not be interested in presiding over a process where we might have a chance to, even ever so briefly, put on the table some of our recommendations at this early stage.

The Vice-Chair: Well, jot your recommendations down, and towards the end of the meeting we'll see how much time we have.

BRIAN DAVY

The Vice-Chair: Mr Brian Davy from M&M Meat Shops. Mr Davy, the floor is yours next.

Mr Brian Davy: Mr Chairman, members of the committee, my name is Brian Davy. I am the owner of four M&M Meat Shops franchises in London. I've been with the company since 1983. The chain now has 286 stores in Canada. I've also owned and sold three other franchises in the past 10 years. At one time I had seven, but I've sold three of them. I just recently opened a new store up in northwest London, in Masonville. I was the president for seven years of the marketing council for the chain and also president of the advisory council for M&M Meat Shops.

My relationship with my franchisor is probably a little different from what I've been hearing today and what I've read recently. We've had very little conflict, other than marketing and minor hiccups in the chain as it has grown into a national chain. We believe that our franchise agreement is fair. It also includes a mediation clause, which I believe a lot of others might not have. It has never had to be used up to this time.

Basically looking at Bill 33, as I was asked to read it from a franchisee's perspective, I feel that it was certainly needed to protect the current franchisees, but mainly the new ones coming in. When I got into the system initially, there wasn't the coverage that we have now even in the franchise agreements.

This is going to be a very short presentation on how I felt about the bill, and that's what I was asked to do. I thought my area might be answering questions more than anything else. When we had a national meeting last week of the advisory council and franchisees, we had 450 people there. We read through the bill, discussed it and

went through how the majority of franchisees at the meeting felt. The conclusion was that they were all similar in voice.

Mr O'Toole: Thank you very much, Mr Davy. I appreciate that. Just to reinforce for the record, your membership, some 450 as part of this marketing meeting you referred to, if I'm hearing you correctly, endorsed Bill 33.

Mr Davy: That's correct.

Mr O'Toole: The provisions in there, as you know, are certainly to have disclosure. If you want to comment in some detail, we have heard on the disclosure part there is general support. Certainly the intent of it would be widely supported. On the next part, fair dealing, there has been some input with respect to strengthening that provision and the right to associate. It would appear that your organization already has that right to associate. Do you want to comment with respect to those three expected outcomes with this legislation, after several years of consultation, in any specific or general way as to how they apply, not just to M&M Meat Shops but to your business experience since 1983? I'd appreciate it.

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Mr Davy: I opened the fifth store in the chain in London in 1983. I opened the 278th store last September. It's hard when you haven't had a lot of problems with a franchisor to pick away at anything that's really not there. We certainly believe that protection is needed. As a chain gets bigger, you certainly get a little bit less voice. We have a national marketing council represented by a big cross-section of franchisees and also an advisory council, which is an elected body from the franchisees within the chain itself, which works very closely with head office and a committee there. They meet probably every six to eight weeks.

Mr O'Toole: One of the bigger things we've heard of concern specifically to the grocery industry was the supplying of goods and/or services. In yours, it's pretty much the same. The only thing is, it's frozen food, I gather. That's part of the whole concept though, isn't it?

Mr Davy: If M&M Meat Shops hadn't branded the name M&M Meat Shops and had tried to live on the Schneider and McCain names, as we did in the early 1980s, I don't think we would be here as a chain now.

Mr O'Toole: You think it's the successful partnering, if you will, and marketplace presence of a strategy and a secret recipe; that you as a franchisee, so to speak, wouldn't exist without the franchisor.

Mr Davy: Basically, they have a very streamlined system in ours. Because it's M&M, we only have one delivery centre, but we have probably 68 to 72 suppliers that will private label M&M Meat Shops products now. I've seen that evolve from the very small factory at the beginning to the fair price structure that they've been able to provide, to give us margins that we enjoy, because as everyone knows—the people in this room in the food business know—it's a tight market to compete with the big chains. But I believe that had we not branded the M&M name like we did, and gone with the suppliers

and the quality that we've gone with, we wouldn't have survived.

Mr O'Toole: Thank you very much.

Mr Crozier: Just a brief question. We certainly have an M&M in my hometown. Is it strictly Canadian, M&M, their franchises?

Mr Davy: Yes.

Mr Crozier: I guess other than some of the fast food organizations, we haven't had too much comment on the international part of it. M&M allows you the right to association, I take it? There's nothing to restrict you from belonging to another association of franchisees?

Mr Davy: No, there's not.

Mr Crozier: Do you, by any chance, belong?

Mr Davy: No, we don't.

Mr Crozier: With the testimony you've given, there's probably not any necessity.

Mr Davy: That's right.

Mr Crozier: Well, then my question would be redundant, because it was one of, even if you are allowed to belong to other associations, to what degree does your franchisor listen to the other associations? That's fine, unless my colleague has anything.

The Vice-Chair: OK, thank you. Mr Martin?

Mr Tony Martin: I'm glad you came today, and indeed your story is a good one. I've been carrying around a tome of stories that have been written over the last five or seven years in Ontario about franchise relationships gone wrong. Yours is actually one of the ones where you've done some things that have ensured that they've gone right, and I want to offer my congratulations to you in an atmosphere out there where that's not always the case.

Do you want to share with the group, just ever so briefly, your TSS program and what that's about? There's a story here, and for those of you who are interested, it's in B-51 of the manual here, written March 30, 1999.

Mr Davy: TSS is a program that was introduced probably two years ago to help the stores that weren't doing as well in sales, depending on the market. It's supported by head office. Basically, through extra marketing dollars in after-promotions—so maybe they'd run a major campaign one week and they would support the other stores the second week. Basically that way they try to make every store in the chain profitable and bring the stores up. There's no big trick to it. If you look at the Masonville area and you look at the demographics of London, that store there is going to take me three years, maybe even five years to build up to where we want to be. Just because it's M&M Meat Shops and we open the doors it's still—not that we will get the support, but there are certain stores that do get it through this program that head office implemented.

Mr Tony Martin: Just a question of concern here, or a note of caution. What if somebody comes in tomorrow—for example, Pizza Pizza, which has quite a reputation across the province—and buys M&M? Is there anything in your contract to protect you from their becoming exploitive or whatever? Could that happen?

Mr Davy: We try to keep current and to update the franchise agreements we have. You don't wait till they run out. If something good changes, you can do a new one. I've got 10 years' protection on all the clauses in my agreement if someone were to purchase the company.

Mr Tony Martin: Excellent. Thank you very much.

The Vice-Chair: Mr Davy, thank you very much for your time today. We appreciate very much you taking it.

PARTY LAND

CENTRAL/EASTERN CANADA

The Vice-Chair: Is Victor Martin from Party Land here? You have a 20-minute allocation.

Mr Victor Martin: By way of background, we are new people on the block. We don't have any franchisees yet. We should be opening one within a month and hope to have several hundred, but I'll be gone by that time.

This is basically my son's business. He's an MBA out of Western's Ivey school and was looking for something. He was in a large corporation that was going to be taken over. As you know, when they downsize they dump anyone and everyone. He wanted to have control over his future, so I said I'd back him financially.

We are the franchisors under the US agreement. The major franchisor is in Philadelphia. We are the largest franchise operation in the world. We're in 17 countries. Why they just started here is beyond me. They have been in foreign countries and everything. Actually, we found them. They were looking for someone in Canada, and we went to Philadelphia after we had read a lot of franchise books and found them and got the Canadian rights.

By way of background, I am a retired chartered accountant from a national and international accounting and consulting firm. I intended to stay retired until my son asked me if I would help him out in this venture.

I read Bill 33. As I say later on, I haven't seen the regs. Maybe there are regulations out now. If there are, I wasn't able to get hold of them. I have some serious concerns about the bill. Throughout my career every act I dealt with was always dealing with so-called public protection, and I have always wondered why there isn't any protection for the other side. I'm talking about all the equity, wage equity and everything I've dealt with in 40 years of accounting practice. I understand why it has to be there to help some of the public, so-called. I have no question or worry about that. I wonder why we wouldn't add, even in a heading, that franchisors have the right to impose operating obligations on franchisees to ensure uniform operations. The bill starts with the main heading that this is purely to protect the franchisee. If any agreement or contract we deal with is to work, it has to work two ways. Otherwise, you get confrontations between the two parties and there's no reason for that.

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I looked at the bill in this way: I analyzed it as I would if I were on a consulting job. What bothered me initially was this right to organize. It almost seems like this is a union bill coming from the NDP government. I

understand that. I did audits for unions, and I understand their position. I'm just saying that's what it looked like to me. Franchisees already have the right to organize and associate under common law, and I wonder why we give them special rights here.

I'm going to interject, in addition to what I've written here. The type of franchisees we are looking for are entrepreneurs. They can come to us with all kinds of money and everything, but we will not take them on unless they meet our criteria. In the party business they have to be outgoing, they have to be willing to manage the business themselves and they have to have a certain amount of business acumen to run it. If you mention unionization or organization, the type of people we want to see, and the people I've dealt with all my life, see red. There's nothing wrong with them organizing informally or whatever they want. We would encourage that, because we want their feedback. But to give them a right in the act to organize seems to me to be right out of sight.

Those items all are with respect to the right to associate, as I see those sections of the act.

The disclosure document, I think, has to be done right if this act is coming in. I think the material facts you are talking about have to be clearly enunciated, because this is the most important part of the bill. If you are going to have damages or have something wrong, you have to know what it is. It can't be a grey area covering every scope of business. You have to know out front what it is. If that is done, I'm sure that franchisors are going to be very careful about what they put in the disclosure document. They're not going to put in anything that isn't correct. I guess there are always people who will do something against the law or against a statute, but I think it's important to know what we're dealing with.

In 5(3)(b), you talk about the disclosure document. What financial statements? It's important to know who that is. Is this the franchisor, which in this case is the Philadelphia head office? Is it the master franchisor, which would be us here? Is it the existing franchisees who are under your umbrella? What are these statements and what are they going to do? We have to know that, and it has to be clearly set out.

Foreign franchisors may also be subject to domestic regulations such as the US Securities and Exchange Commission which require or prevent certain disclosures. In talking to Philadelphia, they are under the Securities and Exchange Commission and they can do certain things. I guess we would have to have some kind of reciprocal law here that would allow disclosure in Canada similar to what it is in the States and not offend the States if in fact you're asking the American head office to give some disclosure. It has to be consistent with the Securities and Exchange Commission. This isn't unlike any other prospectus that's put out worldwide. We have to know what we're talking about here.

As a master franchisor, we don't own any stores and our financials will not provide any useful data to potential franchisees, since our operations are promotionally oriented. All we do as a franchisor is promote.

We've spent a pile of money already—all our own money, so we have no debt. As I say later on, we're not asking anybody to put money into our company. I don't want to issue a prospectus. I will if it's necessary, but why would I do it? I'm not asking for anything.

Our lawyers also advise us that we may not have the right to disclose franchisees' confidential information. They will be submitting information to us on a quarterly basis under our contracts so that we can keep track of what they are doing and be helpful to them. But do we have a right to disclose their private and confidential information? Is the act going to ask for that? I think that is a question we have to ask legal advice on.

There should be provision for providing information at a level of detail which would not reveal to competitors important competitive secrets such as the cost of goods sold percentage. In addition there should be provision in the bill that the potential franchisee must disclose—this is for our protection—if they have any association or relationship with another company or franchisor in the same industry, prior to receiving the disclosure document. Why can't we be protected in this bill? Why would we want to disclose information to a potential franchisee who really is acting as a front person to get information from us, who is really representing another franchisor or something like that? We have to know that they're solid people and have our interests and their interests at heart.

My final paragraph under that section is, with respect to new franchisors, which might be different—I heard M&M. They have a whole bunch of stores; they have a history. We don't have any, so how do we disclose a financial history if there is a disclosure statement? Just put a big "0" and send that in? I don't think that's satisfactory. We have to tell you something and I'd like to know what that would be so that we can do it.

Under subsection 5(5), the disclosure document, this bothers me too when I read it. If a disclosure document is only filed once a year, how can a material change be set out? It's material changes that you're looking for, I believe, in this bill, to find out if there's a problem. Does a new disclosure statement have to be issued every time a new franchisee is contacted? There may be material changes between the last one that was issued and this one. I'm not sure what they do; I think Alberta is the only other one that has such a disclosure in Canada. From my research, that's what I found out.

I'm not sure whether they file this just once, or do they file it every year? I think it's important for this committee to determine this so that you're not giving one person one disclosure statement and another person another one six months later that has different facts in it because things have changed. I'd say this is very expensive if we have to do it every six months or annually. It may not be practical.

Subsection 6(2): This gives more trouble than anything I've seen in the whole act. Rescission for no disclosure: Two years to rescind any agreement is too long and would hurt all parties, given the uncertainty it

would introduce. A better option would be to have a requirement that a franchisee may waive the disclosure document at the time of the signing, at their own risk, or make any franchise agreement void without being preceded by the disclosure document to prevent the situation from ever occurring in the first place. This raises the issue that there should be a phase-in period to allow franchisors or master franchisors to prepare the disclosure documents and to review their documentation so that it does not impede ongoing negotiations with potential franchisees at the time this bill is passed.

Every time in my history of 40 years in practice that a new bill comes out there are usually clauses, grandfathering and current, to allow the bill to work, because everybody's in a different position at the time the bill is passed. There are existing franchisees, there are present ones who are signing now and there are current ones, and you've got to catch them all in some kind of a broad wording that will be effective for them.

Subsection 6(6): As I say, if we change subsection 6(2), the two-year problem, this subsection wouldn't be necessary. In any event, 6(6) is totally impractical as it would be impossible to trace, quantify and unwind all the transactions. I can't tell you, ladies and gentlemen, how serious this is to the franchisee and franchisor. After two years in business, you can imagine the number of transactions. You can imagine the influence of economics and other influences from the outside that neither the franchisor nor the franchisee had any control over; totally out of their control, and would unwind after this type of period. I say it couldn't work.

For example, clause 6(6)(d) requires compensation for operating "losses." Boy, that's quite a word. What are "losses"? Huge losses could occur due to incompetent management where unreasonable wages were paid and other significant operating errors were made etc. Most store leases are for five to 10 years. If an irresponsible franchisee had signed a lease for 20 years at \$150,000 per year, you know you've got to have \$1.5 million. It may or not be brought to bear upon the franchisor, but that's a huge item, whereas the franchisor had nothing to do with signing the lease.

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In my practice, I would have several people in the same area, the same city or same locale running the same operation, one doing very well and one doing very badly. What are the reasons? That's a good question. What are the reasons for that? I was a trustee for 15 years during my career. The trustee is required to report why the bankruptcy occurred. Over 95% of them are mismanagement. The same sweet operation, with somebody who doesn't pay attention to the business, will be run down in six months, and yet the business is a viable business. It's management that did it. As I say, they could take out \$100,000 in wages; the other person took \$25,000 for a while to build up the business. I could name you 100 factors that are going to enter into this, and yet the word says "losses." Does a franchisor have to cover losses if a fellow took out way too much money, paid his wife, paid

his children and entered into improper leases, has no ability to run the store? It's going to be very difficult to determine the underlying cause of the problem. I don't know how we can define it. That gives me nothing but trouble.

So we get into 7(1)(c), "Damages for Misrepresentation." This, again, I don't understand. I'm sure we have lawyers on this committee or you get advice, but I don't understand why an officer of a corporation would sign a document knowing that he might be liable. I would never have advised my clients to do this and I know the lawyers I work closely with wouldn't either. It pierces the corporate veil and no corporate officer would risk exposing himself to such liability. If the bill is enacted it has to go after the corporation, it can't go after the signing officer. If you told a vice-president of marketing to sign this contract, if the president did or CEO, he either signs it or he may not have a job. If the CEO knows something that the vice-president signing doesn't know about disclosure and he wants the vice-president to take the knock, here's the remedy. There shouldn't be any remedy for an officer signing in good faith. There should be a remedy against the corporation only.

Again, when the rights cannot be waived, this seems to violate common law and the basic rights of the individual. If the franchisee feels they are being coerced by the franchisor or master franchisor into waiving a right they would prefer to keep, they should refuse to sign the agreement and look for another franchisor or seek legal advice. We are going to encourage our first franchisee to seek legal advice on the whole contract. If they're not happy with it, we might change it. If we're unable to change the wording or don't want to, we would suggest they don't sign up as a franchisee. We don't want them. What we want are entrepreneurs who are going to run a business and run it well.

What's the difference, if I could put it this way, between independent stores today running their operation and a franchise operation? There's no protection other than common law for any store or any business that's being run today by an individual. So what is the difference between a franchisee and this other party down the street who is running a party store against us? Our advantage and why people will come to us is our purchasing power. There are only a couple of things: our system and our purchasing power. Our purchasing power more than compensates for the royalty. Our franchisee should be able to be very competitive with the fellow down on the corner who is operating the same way, the same business. If he doesn't, if he wants to withdraw, there are escape clauses. He can get out of our contract.

The Vice-Chair: You've just got a couple more minutes.

Mr Victor Martin: I'm at the end.

The exemption: Again, like the other regs I was mentioning, they should be published and available for review. I haven't seen them; maybe they are available. But here again, I'm reading a bill and I haven't seen any

of the regs. The regs are an integral part of the bill. I don't know what they're going to be.

In summary, if you feel there's need to protect franchisees, so be it. I think we have to protect some people. But the franchisee should be a true entrepreneur, should want to run a business, and if there are clauses in an agreement that prevent him from doing so, I think he has a right of damages under common law. I don't know why a franchisee would sign an agreement with clauses that could be used against him by the franchisor.

I also know there are always people who will do things against a franchisee. A large corporation possibly has some ulterior motives. I understand that's there. I'm not naive; I've been around a long time.

That's my presentation. I didn't mean it in a confrontational manner. I just meant to give you exactly how I feel about it as a franchisee. I would not want to be a member.

The Vice-Chair: We've all got a copy of it. We appreciate that. Thank you very much for your time.

PETER DILLON

The Vice-Chair: Mr Peter Dillon. You have 20 minutes, and that includes questions, if we have time for questions. Do you have a handout?

Mr Peter Dillon: No.

Good afternoon, ladies and gentlemen, and welcome to London. My name is Peter Dillon. I'm a partner with the London law firm of Siskind, Cromarty. I have been practising in the area of franchising since 1989. At this point, franchising is all that I do. For the most part I represent Canadian and American franchisors. Other lawyers in our franchise law group represent franchisees, although I have over the years represented dozens of franchisees and continue to do so in the case of long-term franchisee clients.

I am the only lawyer member of the Canadian Franchise Association in Ontario outside of Metropolitan Toronto. I'm a member of the legal legislative committee of the CFA, a member of the American Bar Association forum on franchising and a member of the International Franchise Association.

In September 1998, Western Legal Publishing published my annotation of the Alberta Franchises Act. I am also the editor of QuickLaw's digest on franchise law in Canada.

My interest in appearing before the committee today is twofold. First, I hope to provide some balance to the committee by providing insights from my 11 years of extensive experience in franchising in Ontario. I think the debate on the subject, from what I have witnessed, currently risks being hijacked by one or more well-intentioned but, I'll go so far as to say, somewhat obsessed individuals, along with Mr Martin and the media, who just love horror stories. That's the phrase I hear bandied about and that's the expression that I've seen used when those individuals are soliciting stories

from franchisees who have had bad experiences in franchising.

We Canadians are pretty lackadaisical about getting involved in this kind of process. I can tell you that most of my clients are just too busy trying to make their franchise work, whether they are franchisors or franchisees. As well, for the most part, a lot of them have that naïve Canadian confidence that whether they show up or not, everything is going to work out OK. I have that same confidence, but I wanted to be at least one representative of what I perceive is a very large silent majority.

Second, I wanted to add my voice to those advising the committee to exercise caution in regulating this very important aspect of our economy.

I represent about 20 franchisors ranging in size from no active units, that is, they're just getting started, to systems with 150 franchise units from Newfoundland to Vancouver.

My day consists of advising franchisors on complying with Alberta's franchise legislation, purchasing and selling businesses, negotiating leases for franchise outlets and trying to pry money out of Canadian banks, which is probably one of the toughest jobs I have.

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Of course, I draft a lot of franchise agreements during my days as well. If you were to ask me, "Were those agreements well balanced in the sense of two parties being equally represented and with equal negotiating strength?" my answer would be no, and I think there's a good reason for that. One factor that all of us appreciate about franchising is the need for consistency. I think our desire as consumers is to encounter that consistency. Consistency among humans is difficult to attain.

I have one small anecdote. I once acted for a franchisor who had to pull out the franchise agreement in order to convince a franchisee—this was a doughnut chain operation—that the franchisee didn't have the right to sell his wife's chili, and that came as a surprise to the franchisee. It was a source of disappointment to the franchisee because his customers liked his wife's chili. But when you're running a franchise system and your customers expect consistency, there simply are things you can't do and serving your wife's chili in that case was one of them. The unbalanced franchise agreement was the instrument that we employed to ensure that the wife's chili didn't get served.

From time to time, I have to deal with termination of franchisees. My most recent franchise termination was a very interesting one, in part, I see, because a couple of the individuals involved in that termination are appearing before the committee. In that case, the franchisee was represented by David Sterns from the Toronto firm of Sotos Associates, from whom you've heard, and the franchisee who was terminated is also appearing before the committee.

The franchise system in that case was a full-service restaurant. The franchisee in question owned his own small doughnut franchise with a dozen or so fran-

chisees—a little bit unusual here. We've got the franchisee who also happens to be a franchisor. And he owned a franchise from a national burger chain.

My franchisor came to me from another non-franchise lawyer and was pulling his hair out. The franchisee in question was proving to be a very disruptive influence. He wouldn't adhere to advertised specials, he refused to buy from approved suppliers, he refused to staff his restaurant in accordance with recommendations, and his restaurant was filthy. Coincidentally, a week before we'd been retained by this franchisor, my secretary had advised me that she was out for dinner with her husband and her husband had become quite sick after eating a meal at that restaurant.

The franchisee was taking some kind of perverse pleasure in ripping the franchise system apart, flexing his muscles, as it were. He refused to follow any dictates whatsoever. However, he always paid his bills on time. He'd been advised by his lawyer that there was nothing we could do. In fact, we conducted an inspection of the restaurant and found what I can only describe as disgusting conditions: mouldy food, accumulated filth in refrigerators and dishwashers, unsanitary food preparation, improper food storage, and the list goes on and on. We took lots of colour photos and then changed the locks on the doors and terminated the franchise. The franchisor hired steam cleaners and renovators and after about a week of cleaning, the restaurant was ready to open again.

The franchisee, who was far from unsophisticated or without resources, brought an application in London for an order permitting him to regain possession of the premises. Because I find judges tend to give the benefit of the doubt to the little guy, I was surprised when the judge upheld our actions and refused to allow the franchisee back in. I think the colour photographs really tipped the scales in our favour.

Although my client could have continued to fight the franchisee, we settled the matter by rebuying the restaurant from the franchisee. We paid him about half of what he had paid us a year previously. Outrageous, you say? The franchisee's weekly sales had fallen to about half of what they were. Six months later, sales are back to almost where they were, but my secretary and her husband still won't eat at that restaurant. That's the kind of damage that a bad franchisee can create for the goodwill of a franchised system.

A lot of people complain that the government needs to heavily regulate franchising because justice through the courts is too expensive and too time-consuming to obtain. This doesn't make sense to me, for a lot of reasons. First, to the extent that the accusation is true, it's an indictment of our court system, and that's where the government's energies should be directed. Second, I don't see why a franchisee should have special rights as a result of his contractual relationship when, for instance, a tenant under a commercial lease would have no such special rights. Third, I can tell you from first-hand experience that judges have a strong predisposition in favour of franchisees.

In one matter several years ago where I appeared for a franchisee, I introduced myself to the judge as acting for the franchisee, and my friend, Mr. So-and-So was appearing for the franchisor. The judge, who was as sharp as a tack but liked to give the impression of being a country judge, said: "Mr Dillon, franchisee, franchisor, I get so confused with these terms. I'm going to say that you're here for the little guy and Mr. So-and-So is here for the big guy." Of course, I didn't object to that characterization and we went on to win the matter, despite the fact that as far as I was concerned my client didn't have the moral high ground in the case.

We in Canada have some significant barriers to productivity and wealth creation. Our climate can be tough on us. We have a lot of government paperwork to contend with. Our rates of taxation are still brutally high. The availability of capital is a problem in Canada. Our geography is terribly daunting and, I can tell you, from the perspective of a franchisor it's especially so. The prospect of opening and servicing a new franchise in Timmins is daunting enough, let alone Vancouver. In addition to being small, our population is widely dispersed. This results in surprisingly few markets of any significant size across the entire country.

One area of life where I think we stand head and shoulders above our American cousins is our judicial system. The Americans, in their Jeffersonian pursuit of Utopian justice, tend to be highly interventionist. I can tell you that my CCH franchise law service extends to over 15 volumes of 6-point print on my bookshelf. I believe that if we attempt to emulate the American example on franchising, we will suffocate the baby. One need only consider the chilling effect on business that Alberta's predecessor legislation had on franchising in that province. Alberta, I believe, saw the error of its ways and totally repealed its highly interventionist legislation in 1995, as I'm sure you've heard.

The fact is we can't analogize our situation with the American economy. The American economy is so large and so robust, their population densities and demographics are so different that to say, "Well, they have done it, so we can do it," just doesn't hold water. The typical estimate that we provide our clients in terms of the legal costs of starting up a franchise system in the States—this is just the legal cost—is US\$100,000 to deal with the 48 continental states. Now, when you're dealing with the potential payoff from the American market, that's a number that you can deal with, but there's no hope of recovering that kind of sunk legal costs from the Canadian market.

The Chair: You've got five minutes, Mr Dillon.

Mr Dillon: I spoke earlier of the phenomenon of courts bending over backwards to help the little guy. I think our common-law tradition has also served us very well. Doctrines of unconscionability, fiduciary duty, good faith, commercial reasonableness and others have been used to protect people from unfair bargains, while at the same time preserving our valuable and deeply entrenched right to contract freely among ourselves.

I believe that Bill 33 in its present form—and there probably aren't too many other people in the province who have read it as closely as I have—is a sound response by the Legislature to the concerns of the franchisor and franchisee communities in Ontario. The extent to which it creates additional expense and burden to franchisors is minimal, especially to the extent that those franchisors are already members of the Canadian Franchise Association and comply with the mandatory disclosure policy of the CFA. It's also reasonable in its imposition of a fair dealing obligation and the rights granted to franchisees to freely associate.

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Importantly, Bill 33 is consistent in scope and language with Canada's only existing franchise legislation; namely, the Alberta Franchises Act. As I think I've made it clear, my belief is that a government's role is to facilitate, not hinder, commerce. I believe that any changes to the bill from its current form and content would hinder, not facilitate.

Ladies and gentlemen, franchising is an important part of our economy. It should be fostered and encouraged to play a larger role in our economy. It is a sound method for the delivery of goods and services to the Ontario public. Yes, there are some horror stories out there. Some of them are the result of stupid actions by shortsighted franchisors. Some of them are the result of laziness, poor organization and lack of application on the part of certain franchisees—and I've acted for some of them. A few of them result from unscrupulous fly-by-night franchise organizations, although personally, and fortunately, I have no experience with the last category of horror story.

I encourage you to recommend passage of Bill 33 in its current form, for the benefit of all Ontarians. Thank you for your time.

The Vice-Chair: Thank you, Mr Dillon. We've got a few minutes for questions. Any questions from the Liberal caucus?

Mr Crozier: No, I don't have any questions. I just like the idea that that judge had the right perspective.

Mr Tony Martin: I come to this piece of work not so much by choice as by having been invited in by a number of franchisees in my own community who were being hammered by a new corporation that took over their old franchisor and was just taking their livelihoods away from them. That can be a horror story that we all take advantage of and blow around in the press. Sometimes that's the only option we have to get redress, because a lot of these folks can't afford the legal fees required to fight the bigger companies. I suggest to you that Mr Stewart is on this issue not by choice either but by the circumstance of having been a victim himself, and then because of that and his courage to go public with his story, others phone him and ask for help and advice. Neither of us can sleep at night sometimes for thinking about the families we've heard from over the last three days during these hearings and that we will continue to hear from because we're seen as people who are interested, who care and want to do something. Are you

suggesting that we leave those people simply twisting in the wind?

Mr Dillon: First of all, let me say that I've a great deal of respect for Mr Stewart. I know something of his situation, although I have no first-hand knowledge. With respect to one of the evils that this legislation is intended to redress—namely, disclosure—I frankly am not sure that you could have ever improved on Mr Stewart's due diligence. You've got a person of exceptional intelligence, exceptional background, with an MBA, who contacted I think 20 out of 22 existing franchisees, prepared pro forma information etc. The courts have reviewed and found against Mr Stewart. I just don't know what else could have been done to prevent Mr Stewart's unfortunate situation. That's point number one.

Point number two is that some businesses fail despite the fact that no one would have expected them to fail. Let me give you, for example, the recent concept launched by Cara foods. I hope no one from Cara is in the room, but people with—very few people in Canada probably have more experience in franchising than Cara, and it was a disaster and they lost a lot of money in it. Let's not forget that even though we're dealing with a lot of sophisticated franchisors and some big business people, we're still dealing with a fickle public, bad locations, errors in judgment etc. So nothing is going to prevent horror stories, both on the part of franchisors and franchisees.

Third, with respect to franchisors, I think the franchisor you described falls into my first category of stupid franchisor, and I do see that. I can't believe it, sometimes, when I see what is short-sighted behaviour on the part of franchisors. But I think, across the spectrum of the economy, we have to believe that enlightened self-interest is going to motivate franchisors to be fair, to ensure that there is a reasonable return to their franchisees. If that's not the case, they're not going to be in business for very long. I'm not sure we can ever legislate good sense on the part of franchisors.

In terms of people who are abused wrongly and fall into the fly-by-night category, I think the judicial system responds. A great deal has been done by the government in the past few years to expedite proceedings, and things are not as expensive or as slow as they once were, and I think that's the way to continue. The fair dealing obligation in the act will certainly assist franchisees in that regard.

The Vice-Chair: Mr Wood, do you have a comment?

Mr Wood: I have a quick question. What rate of return do you think franchisees might reasonably expect on their investment?

Mr Dillon: The rate of return that will ensure that within the term of the franchise—be it five years, 10 years, 20 years or whatever—their initial investment is returned, plus a reasonable profit.

Mr Wood: What do you think is a reasonable profit?

Mr Dillon: That depends a good deal on the risk involved, but if you ask me, off the top of my head I'd say 10%.

Mr Wood: Do you think they tend to get it?

Mr Dillon: In my experience, yes.

The Vice-Chair: Mr Dillon, we appreciate your time today. It was a good presentation, and we'll take everything under advisement.

HOWARD ROSENBERG

The Vice-Chair: Is Mr Rosenberg here?

Mr Howard Rosenberg: Good afternoon, ladies and gentlemen.

The Vice-Chair: Before you start, Mr Rosenberg, just to the committee: Mr Martin had some previous comments about our next steps after this, so after Mr Rosenberg's presentation we'll have about 20 minutes to discuss that. Thank you very much, Mr Rosenberg.

Mr Rosenberg: I don't purport to know as much about Bill 33 as the illustrious fellow before me. However, from the summary I've seen of it, I have to wonder why it even exists. It gives franchisees the right to associate. Is this not a free country? Why do we need a bill to give franchisees the right to discuss their business and other things? I think it's superfluous and redundant. My feeling is the opposite to what the previous speaker said. We need a good, solid set of laws with respect to franchises because any franchise agreement, as the previous speaker also said, is totally one-sided.

When a franchisee enters into an agreement with a franchisor, he has no rights. I've been through it. This is why I'm saying this and it's why I'm here. My solicitor phoned me up and said, "You should come and tell your story." I'm the fellow in the story with that restaurant. I had an operations manager, a regional area manager, who had left the franchisor to come to work for me. Contrary to what you were told, I was told my store was the cleanest one in the system. So if that's the case, then don't eat at Crabby Joe's.

There was one in Welland that the franchisor closed up and reopened. There was in St Catharines that he closed up and reopened. There was one on Wellington Road in London that he closed up and reopened. Talk about fly-by-night. In that particular instance, when you have 10 stores and 40% of your stores are constantly turning over, I think we need to look at the franchisor as opposed to these franchisees.

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I agree that there should be some consistency with respect to a franchise system. I've worked for a major franchisor, I've owned my own franchise and I've been a franchisee for two particular people. What I'm trying to tell you is that it's very unfair. I was closed up because the bulk of the information stated that my store was basically dirty etc. I had a health department report a month previous to that, and the London health department said everything was cool. I had been running this operation for about a year and a half. After a year and a half of running it, and the health department comes in and says everything's fine, the franchisor comes along and concocts these stories about how dirty and filthy it was and takes pictures. I have to repeat myself. The area

rep, who left the franchisor and worked for me, told me that my store was the most efficient and the cleanest store of any in the chain.

This particular franchisor decided for various reasons—one of them was that I had begun to speak with another of the franchisees. I was in the south end and there was a franchisee in the east end. He came to me and a fellow from Tillsonburg also came to me and said, "There are serious problems here." I didn't start the discussions. When the franchisor got wind of this, the result of what I told you happened. I got locked up. I invested a ton of money in this restaurant. I was locked up without warning. There was no official, formal, legal warning that I was going to be locked up. One Saturday morning somebody knocked on my door and said, "Here, your restaurant is closed." Oh, well, it's only half a million dollars.

This particular franchisor—talk about fly-by-night—was involved in another chain which he converted into this chain. Again, just look at the history: All the stores closed, opened, closed, opened. In most instances he would pinpoint someone who had their life savings put into a store, and he would come along and invent some fictitious reasons for closing them up. These people had no more means to fight, so they had to curl up and die.

My lawyer said to me: "You have two choices. You can curl up and die or you can invest a little bit more money in legal fees and we have a shot at it." I had no choice. I couldn't walk away from it because I would have been totally wiped out. Fortunately, after the first day of court, when the injunction was filed, the franchisor's lawyer that afternoon contacted my lawyer wanting to settle. Believe the facts as you may, but if things were weighted so much in this fellow's favour, why would his lawyer contact my lawyer and say, "We want to settle"? The conclusions are yours.

All I'm trying to say is, as the franchisee—put yourself in a franchisee's position—you're investing all this money, whether it's McDonald's, Tim Hortons or anyone. Yes, the franchisor has a system and he's put some money into it etc, but I just don't think it's fair. Let's say you pick a really good franchise like Tim Hortons. That's almost guaranteed, but if Tim Hortons makes a mistake—for example, Tim Hortons is now in the States; I understand they're not doing as well as they are in Canada—I think that the franchisor should have some of the onus on them if a venture fails. Why is it that the franchisee puts all his faith into this franchisor and all his faith into the system, and for whatever reason, whether it's his fault or not—sometimes it's the franchisee's fault. I agree. Some franchisees do not have the experience. In my particular case, I had run a chain of 13 doughnut shops single-handedly, so I had a little bit of experience. One restaurant was not that difficult for me. But why should the franchisee lose all his money and the franchisor lose nothing?

This is what I mean by writing certain things into the legislation. I honestly believe that if it's a partnership, as some of these franchisors say, there should a partnership

in the gain and in the loss. So if the franchisor makes a mistake with a location or what have you, or even in picking a franchisee—if the franchisee doesn't work out—I think the franchisor should bear some of the weight, whether it be to give the franchisee some of his money back, or be obligated to maybe purchase the equipment and pay off the bank or what have you. The problem for a franchisee is that has one shot. He has his life's savings in it, and if he loses he's finished. That's a concern for me.

The other thing is: One of the discussions I had when I originally entered discussions with the franchisor was that if I could find the identical product at a different distributor, because I had had some experience working with other distributors, would it be OK if I were to do that. Verbally he said yes, but when push came to shove he denied it. Fortunately I had a partner at the beginning, and he was a witness to our conversation and signed a document proving that I was right.

One of the reasons one buys a franchise is to achieve the volume purchasing power of the franchisor. Obviously, if somebody has 10 stores, he's going to be able to buy better than someone who has one store. In my case, I contacted a distributor and I could buy a case of ribs \$5 cheaper through my distributor than I could through the franchisor's "volume purchasing." This is why I could see there was a problem. The industry standard for restaurant food costs is 32% to 33%. When I took over, mine was 40% and was in line with the rest of the franchises in that chain. So someone was making an excessive amount of money at the expense of these poor franchisees, who were investing their life's savings.

Things are fundamentally wrong. There's too much power involved with franchisors, in that they can basically invent things. Once you sign that agreement you're locked in. If you don't buy from him, bang, you're locked up. You're locked up if he doesn't like you because you are talking to other franchisees or what have you. To be honest with you, since my situation was quoted, the problem my franchisor had with me was that he was afraid I would associate with the rest of the franchises, and we were discussing starting a buying group so we could buy things cheaper.

I don't know much about the Competition Act. From what I've read about it I think it's very difficult to enforce, but there are certain clauses in it which legally prevent franchisors from getting into this "You have to buy from my distributor" type of thing. But in discussing that with my lawyer before this even happened to me, he basically said it's very hard to bring the Competition Act into the swing of things here, so just leave it.

My franchisor even set up the terms. I came in; I had credit with distributors I was dealing with. Then I had to buy from his distributor and I had to pay COD. Why? Because there's no risk to him. Secondly, I said to my distributor: "If I'm paying COD, isn't there some sort of arrangement in general business that if you pay cash you get a 2% discount?" "No, we can't give you that. This is the way the pricing structure was set up." I don't think I

need to tell everyone where all the money was going: 6% of sales works out to be \$6,000 if your average sales are \$100,000 a month. I'm not good in math, but without spelling it out, I think you can pretty well do it.

I also find it very strange that when I was a franchisee of the second-biggest burger chain across Canada, when I had reports done by my area rep they came in at the top achievement, my stores were clean, clean health department reports in both places. On the other hand, this other franchise, had a history of life's savings, closing, life's savings, closing, new franchisee, don't buy it back, kick him out. I'm sorry: I'm not as eloquent as the previous fellow, but I'm just trying to get the message across. I didn't really want to come here and say this, but I thought that if I could come here and get this across to you people and prevent what happened to me from happening to someone else, then at least I would have accomplished something. That is really all I have to say.

1430

The Vice-Chair: We have a few minutes for questions. Mr Martin, your turn first.

Mr Tony Martin: If you are worried about the picture that was painted about yourself by the previous presenter, not to worry. You are in an exclusive group of people that he targeted. I happen to think that all of us are probably pretty good folk. I want to thank you for coming here today and for having the courage to share your story and to enlighten us.

It seems to me that the nub of some of your difficulty with your franchisor is this issue of tied buying or sourcing of product. You mention it as volume purchasing, and we've heard this story a few times over the last three or four days. When people who were tied into buying from the franchisor actually went out to see the market value of the product they were being forced to buy from the parent company, it was much cheaper. Had they been allowed to do that, they would have been able to make a bit more profit, support their local economy and help out in terms of generating a bit of a customer base for themselves.

Would it be fair to say that some of the issue your franchisor had with you was his inability to get you to stick to the tied buying arrangement that he would have preferred?

Mr Rosenberg: No. As I said right at the outset, I specifically said to him, face to face, "If I can buy the same product—not similar, but the exact same product—somewhere else, would I be allowed to do that?" He said, "Yes." I didn't have it in writing. That was my mistake; I should have had it from him in writing. Then when I went and did it—if I had not gotten his agreement in advance, I wouldn't have gone to buy elsewhere. I know what the franchise agreement said etc. The problem is that this fellow was making \$1 million a year on royalties, rebates, liquor company kickbacks and budgets. He would get a budget of \$200,000 for 10 stores and give each store \$6,000.

My philosophy is, live and let live. I was in this to make a reasonable living. I see the industry standard of

32% to 33%, and I'm running a tight ship. He always tried to slough it under the rug. I had a program on my computer which gave me my theoretical food costs. He would always say, "You're not controlling things," and I would know exactly where I was out every week. If there was a steak missing or a case of chicken missing or whatever, I could go to the kitchen manager and say, "There's something wrong here." In most cases, when a businessman runs his restaurant, if he does his food costs at the end of the week and is out, he says: "It should have been 34, but it's 35. I don't know why the food costs are out." I knew exactly why. The franchisor was trying to tell me that I wasn't running a proper ship. He didn't know I had this theoretical thing.

In answering your question, my philosophy is, live and let live. This guy is making \$1 million, and I'm struggling just to pay off the bank. If everything were equal, that would be fine. But when my food costs are out by 6% and they're going into his pocket, and he's just doing that so that I cannot make any money and eventually close up, that's not fair. Again, it's a matter of being treated fairly.

There has to be some regulation so there's fair treatment between the franchisor and the franchisee. If I can buy things cheaper through my franchisor, which is how it should be, then fine. That's why I'm buying a franchise: to get the volume purchasing power. I should have been able to go out and buy a case of ribs for \$5 more, not \$5 less. This fellow had 10 stores, and I could buy the exact same product for \$5 less.

The literature he gave me originally said, "You're buying this franchise for volume purchasing power, so that you can save money." If I can save money by going out and buying it myself, then there's something fundamentally wrong. Where's the legislation that doesn't allow him to do that? There is no legislation. He can do what he wants. He can come along and say: "Hey, your store is dirty. I don't care what the health department says; I'm closing you down. You're losing all your money."

He offered me \$50,000 for the equipment on a \$500,000 restaurant. That's why I went to court. I couldn't sit back and—that's why I spoke up and that's why I talked to the other franchisees. I have to have a certain amount of self-respect and I have to be treated fairly, and if I'm not being treated fairly, then I'm not going to lie down and die the way the others are.

Sorry I'm getting all worked up here.

The Vice-Chair: Mr O'Toole has a comment.

Mr O'Toole: I appreciate your presentation this afternoon. It's interesting that we'd have had the attorney here at the same time; it seems a little bit unusual.

The purpose of this committee, of course, is to look at finding some suitable legislation to make sure we have fairness in competition and in the marketplace. It's not a perfect balance, but have you looked at, legislatively, the disclosure provisions within this? I know you haven't perhaps read the bill, as you said at the beginning, but disclosure, meaning making sure that those contracts are

disclosing the pertinent information—I don't think too many have disagreed with the intentions there.

Mr Rosenberg: To put it bluntly, what is being disclosed does not prevent what happened to me. That's all I'm saying.

Mr O'Toole: It would clarify, if I may—and I'm not trying to solve your problem here, by the way.

Mr Rosenberg: I don't have a problem any more.

Mr O'Toole: But I think it would clarify these supply specifics within the contract. "You said/he said" isn't really too good for anyone, to say, "You said that I could buy it," or "They said you couldn't." Let's go to the contract and make sure that's in the disclosure document.

Mr Rosenberg: This disclosure document, are you more or less talking about a summary of the franchise agreement?

Mr O'Toole: Yes, and I suspect it could disclose what were the provisions with respect to buying product. As you say, you are buying it for the purpose of getting volume discounts. From the perspective of the franchisor, you're really trying to get into the whole issue of product consistency and predictability; like, you're not going to buy ribs that are inferior. Do you understand? So there's some legitimacy in the franchisor specifying what products you will buy.

Mr Rosenberg: I'm not disputing that, but I'm saying that the products that I purchased were the exact—and I didn't say, "Can I buy something similar?" at the outset; I said, "If I buy the exact same product." Then I shouldn't be able to buy it; there's obviously something fundamentally wrong if I can go out and do that. Maybe there should be some legislation in there that says that if the franchisee is required to buy certain items, then it has to be at the best possible price that anyone can buy. If in fact he can buy things cheaper, then maybe the franchisor has to be penalized. The franchisee, every time he turns around, gets penalized for whatever.

Mr Crozier: If you were in this instance entering into a franchise agreement, what would prompt you to put that on the table, the question to the franchisor, "If I can buy the exact same product cheaper...?" What would prompt you to do that?

Mr Rosenberg: Only that I had my own doughnut chain of 13 stores and I had a lot of connections in the food industry with different distributors, so I thought if I could go to these distributors and save myself money, why not do that? To me, that's the way you run a business. The way I run a business is to try to minimize your labour costs, minimize your food costs to the extent that you still give good service, but if you can buy things cheaper, that's how you make the money. Your hands are tied when you're in a franchise. You can't do anything else, really. You have to do exactly what they say. So I thought if I could go out and—

Mr Crozier: See, that's what I'm trying to get straight in my own mind. What's the advantage to franchising if in fact one or the other can cherry-pick as to what they are going to abide by and what they aren't? I go back to a comment I made earlier today. There may be the instance

where the only similarity between you and a franchisee in the next town is the name on the store. There has to be some standard, I guess. Obviously we've all said that it has to be fair.

Mr Rosenberg: You're missing my point, though.

Mr Crozier: You can help me.

1440

Mr Rosenberg: I did not ask the franchisor, "If I can buy a similar type of rib, is that OK?" I asked him if I can buy the identical ribs from the same supplier, from the same manufacturer. If I were the franchisor and I had a clear conscience and I knew I was giving my franchisee the proper purchasing power, I would right off the bat say, "There's no way you will." Sure.

Mr Crozier: So then I could assume the same would apply not only to the ribs, but to the napkins, to the utensils you use, the equipment you use, the advertising you have. If you could go out and get the exact same advertising at a better price, you think you should have the flexibility to do that.

Mr Rosenberg: The exact same advertising?

Mr Crozier: Yes.

Mr Rosenberg: Well, yes. I don't think it should happen. If you've got a franchisor who has 10 franchisees—all I know is this, OK? When I had three doughnut shops and I went to a distributor and I said, "I want a price," it was very different than when I had 15 doughnut shops because of volume purchasing power.

Mr Crozier: And you were acting as franchisor in that case?

Mr Rosenberg: They were independent. They weren't franchised at all. They were just independent and I wasn't acting as franchisor.

Mr Crozier: OK, thank you.

The Vice-Chair: Mr Rosenberg, thank you very much for your time today. We appreciate it very much. You brought some good points out there.

Mr Rosenberg: My pleasure.

The Vice-Chair: Thank you so much.

The next deputation is on at 3 o'clock, the Fauberts. Are they here? We'll wait till 3 anyway, but we've got some time to discuss what Mr Martin was concerned about earlier. Do you want to bring those points up now? We have about 20 minutes here.

Mr Tony Martin: I don't want to be confrontational or adversarial. We've had four pretty extraordinary days here where we've heard from some folks about an issue that I think has some tremendous seriousness attached and ramification for the way that business is done in this province and the effect that has on the economy of the province and in particular regions of the province.

When we were in Sault Ste Marie we heard about supply issues and the fact that tied buying in the franchise industry was in many very specific instances having a tremendously negative effect on the ability of local producers to get their product on the market so that it could be available to consumers and consumers could make a choice.

This was affecting the franchisee, the small business person, because if he or she were allowed to go out and purchase where they could get the product at a competitive price, they could put it on the shelf and improve the potential for them to make a profit and be successful.

It affected the local business community because there were people in that area who were producing milk, for example, who were having an awful time getting their milk into the market and on to the shelves, not because they weren't producing a quality that was of high standard and their prices weren't of a competitive nature, but simply because an arrangement was made at a higher level they couldn't afford to play at, their product is off the shelf.

That's taken its toll on the communities within which those businesses operate and, I suggest, on whole regions of this province, the further you get away from the centre and the Toronto area: northern Ontario, in particular, in my instance.

So I'm putting on the table the possibility of perhaps the ministry, in preparing for second reading of this bill or of a bill that they might consider amending, or a bill they might put out that those of us who have worked hard at this might bring in amendments to, might consider doing an inquiry of some sort on the implications on the economy, on local economies and communities, on small businesses and franchisees of having 80% of the food industry owned and controlled by two major entities and the tied buying that goes with that reality.

I would also, as we mentioned yesterday, recommend that the committee, through the ministry, seek status in front of the federal bureau of competition so that we might present some of the findings that we've gotten here over the last three or four days and encourage them to, with us, do the right thing to protect small business and to protect a spirit of competition in this province, particularly in this instance because those are the people we heard from the most, the grocery industry. That's one piece.

The second is equally as important as far as I'm concerned. It's concerned with the influence that the Canadian Franchise Association has obviously had in the development of Bill 33, and the protected image that's out there that this association speaks for the industry and acts, when requested, on behalf of both franchisor and franchisee to try to settle disputes. I'm concerned that the perception that that in fact is happening has unduly influenced the development of Bill 33, to the point where the government may consider not accepting amendments we might make to this bill for fear of offending that particular organization.

We've seen, over and over again over the last three or four days, members of the Canadian Franchise Association—some of them members of the board of directors, some of them counsel, some of them the president and executive director—speak to us and very clearly indicate that it would not be in the best interests of franchising in the province to go any further than what's in Bill 33. It flies in the face of the evidence that we've seen—

anecdotal, however it may be—from some of the folks who have found themselves caught up in that vortex and are now struggling to try to make sense out of it, to try to protect investment that they've already made and that is in jeopardy, and in some instances to put in place something that would be protective of others coming down the road. Not to speak of the need for us to make sure that there is a level playing field, access to justice etc for those who might be considering getting into the franchising business, considering, as I've said before, the economy that we're in that's shifting very rapidly and sometimes leaving people out there with a package of money, sometimes by way of severance, that they're looking to invest. Certainly franchising presents as an easy turnkey possibility that they may be wanting to get into.

I think that as government we have a right and a responsibility to make sure that we have proper regulation in place to protect those folks, as was mentioned to me yesterday evening as we watched some of the media coverage of the now infamous Marty McSorley case in hockey. In business, it's been made clear over the last few days, it's tough and you've got to be good at what you do. You've got to have the fundamentals down, and when you go in the corners you've got to be willing to exchange a few body checks and elbows, but a two-hander to the side of the head is obviously beyond the pale. What we've found here is that in many instances in the franchising industry today, some of the little guys in the business are getting, very clearly, a two-hander to the side of the head.

The criminal justice system has stepped in in the Marty McSorley case. I think that we as government have a responsibility, in this instance, to make sure that we're playing the game according to the rules and that everybody knows what the rules are and that at the end of day, if we do the right thing, we practise hard, we bring our intelligence to the job, we have some chance of at least staying in the game and having some success.

I'm tabling a request to the ministry, through the committee, to explore the relationship between the Canadian Franchise Association and legal counsel to franchisors in legal conflict with their franchisees. Some of you will remember that yesterday I delivered a letter to the president of the Canadian Franchise Association here. A company that is having a dispute—mind you, a legal dispute, a litigated dispute—the franchisees are having a legal dispute with their franchisor. They've tried to deliver a letter of complaint to the association. The association won't receive it. I gave this to the president yesterday on record and later in the day he returned it to me, saying that because this matter was under litigation, he couldn't receive it.

1450

I suggest to you that is only one example of the dismissive attitude of this association to franchisees, which further heightens my concern that we have conflict of interest all over the place here. The Canadian Franchise Association deserves to be looked into to see if in fact

they're doing the job that, under the auspices of the Ministry of Consumer and Commercial Relations, they've been licensed to, as I'm sure they are probably a non-profit organization.

Those are the two issues I put on the table here this afternoon.

Mrs Boyer: I think it is a question of order. I understand where Mr Martin is going. As I read the report of the subcommittee, it says that if the time permits on the fourth day of hearings, the committee members may make statements and proposals for the method of proceeding during further consideration and clause-by-clause review. I don't think this is the forum right now to do whatever we want to do. I think we did say that we could have more days. I thought that number 4 was just saying that together today we'd decide when we're going to meet again. Of course, we've got a lot of things to say, and I want to discuss it with the critic of this bill. I have no authority right now to do it. I thought today we were going to decide on a date and a time that we would meet again to go through this bill.

Mr O'Toole: I know there's a certain dynamic around any public forum, and I respect members' rights to express differences in the public forum on the record. I think that's been done. Whether it's appropriate within the approved minutes of the subcommittee is questionable. Nonetheless my own belief is that there is a time and a place. I believe the subcommittee should convene. We have not had the privilege of having the regular full Chair in attendance at any of these public hearings. I think she would need time to review the record and the debate and call a subcommittee meeting after April 3 between the subcommittee members representing all parties.

The intention here is to find that balance between the needs of all parties and the commerce of this province, and I think we're that close to it. I've heard in the discussions a lot of willingness to find a balance that will help us to have a better place to live, to work and to raise a family in this province. That's kind of how I see it. I could be polarized as well, but I'm not. At this point, I'm just digesting what I've heard after four days of public hearings, much of which has been a very valuable insight that can only add to a better piece of legislation.

Mr Gilchrist: There's nothing for me to add save and except to assure Mr Martin that, speaking only for myself, I brought no bias into this. Minister Tsubouchi asked my views going back three or four years ago based on my retail experience. I'd never even met anyone from the CFA until the first day of hearings here.

Again, speaking only for myself with a completely open mind, I think the testimony we heard from both sides, franchisor and franchisee, gives us pause for further consideration. You've heard already that the working group has considered and approved five more amendments that I hope you find favour with. I think you have already expressed that you have, and I'd like to think in that spirit we're going to continue to move forward.

I think we should each be pressuring our respective House leaders to ensure there's no impediment to the committee meeting again very quickly after April 3, the next time we're legally allowed to come back as a group, and to move quickly to do a clause-by-clause that's definitive enough that we can do it once at this stage and preclude the need to come back again after second reading.

I don't think there's anything to be learned beyond what we've already learned today. We'll be able to distill down, all of us, our respective positions when it comes to various amendments. I think if they're brought forward with a good business case, I'm quite confident that we're going to leave that round of clause-by-clause with a pretty harmonious feeling around this table based on how close we are right now. If we do that, our second appeal to the House leader should be a very fast second and third reading.

There is nothing, I would submit to all my colleagues, to be gained by belabouring this. We've heard of issues that are outstanding right now, particularly in the grocery sector, where there are negotiations taking place that might very well be positively impacted the moment this

bill is passed. I think to indulge in our traditional propensity for more talk at Queen's Park simply adds an impediment to those people getting the kind of justice and fairness, in both directions, that I would hope is the goal of all the members on this committee.

I'll give you a personal commitment that not only in the appeal to the federal government, I would certainly join with my colleagues opposite in suggesting the Competition Bureau has a big problem that they should be confronting in a far more public way, but also in terms of pressuring our House leader. You certainly have our commitment that we will move expeditiously to reconvene, do clause-by-clause, then debate this bill and hopefully bring it to a mutually agreeable conclusion as quickly as possible.

The Vice-Chair: That sounds good.

Mrs Boyer: No problem with that.

The Vice-Chair: I don't know if the Fauberts are coming or not. We have to wait around for about five minutes in case they do show up. A five-minute recess.

The committee recessed from 1457 to 1510.

Failure of sound system.

The committee adjourned at 1512.

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Journal des débats (Hansard)

Mercredi 12 avril 2000

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 12 April 2000

Mercredi 12 avril 2000

The committee met at 1006 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Ms Frances Lankin): I call the meeting to order. Welcome to you who have joined us today. We have a matter of committee business to deal with before we move into dealing with the Pr bills that are coming forward today. The first item on the agenda is the report of the subcommittee. Members will have this circulated in front of them:

"Your subcommittee met on Wednesday, April 5, 2000, to consider the method of proceeding on Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors, and recommends the following:

"(1) That the committee meet on Wednesday, April 12, 2000,"—that's as we're doing now—"to consider the subcommittee report and to consider private bills that are on the agenda.

"(2) That the committee meet on Wednesday, April 19, 2000, to hold a discussion on findings the committee gathered during the public hearings into Bill 33 and in review of the summary of recommendations prepared by the research officer. Each caucus will make an initial presentation of up to 20 minutes and the second hour will allow for discussion and questions.

"(3) That the committee meet on Wednesday, April 26, 2000, for clause-by-clause review of Bill 33.

"(4) That amendments should be given to the clerk of the committee by noon on Tuesday, April 25, 2000."

Mr O'Toole, would you move the report so we have it properly before us?

Mr John O'Toole (Durham): Yes. To put the report on the floor, I will so move.

The Chair: Just to let committee members know the discussion by the subcommittee, the intent of the report is to allow for a day's discussion about what committee members heard when you were on the road, hearing from the public on this bill, to have an opportunity to discuss among yourselves the areas of concern or agreement that you have with the bill, so that each of the representatives of the three caucuses has an opportunity to understand where various committee members are coming from and their perspective. That might be helpful in promoting some agreement around particular amendments or find-

ing out if there is a consensus for amendments or no amendments or whatever the case may be. That will unfold in the course of the discussion.

The deadline that follows from that is for the caucuses, the parties, to actually submit amendments to the bill. Then when we move into the clause-by-clause period we would be dealing with the bill and any amendments to it that have been properly submitted.

I also want to draw to your attention the report that all committee members have received from Susan Swift, research officer, which is entitled Summary of Recommendations Bill 33—Franchise Disclosure Act. If you could look at the top of page 2, the very first recommendation, under "General," reads, "Bill 33 is a workable consensus among the various interests that were represented at the franchise sector working team and should be enacted without delay." Then there is a series of names bracketed under that. Could you add to that "CFG"; that's the independent grocers. It was inadvertently left off in some of the editing of the document. Rather than recopying the whole document, we just wanted to make sure you're aware that the grocers should be added.

Are there any questions or comments on the report? Mr O'Toole.

Mr O'Toole: I think Ms Boyer was ahead of me, but I'll speak after her if I may.

Mrs Claudette Boyer (Ottawa-Vanier): I just wanted to know—reading the report from the subcommittee, I think that we had mentioned in number 3 "to begin," and now this is struck out, and I just wanted to know if that's added an incentive—why that was struck, "to begin" clause-by-clause.

The Chair: It has no practical difference between the various wordings. I think it was a request by Mr O'Toole. The clause-by-clause will take as long as it takes, given the rules of the committee and the length of time that people can speak to clauses, unless there is a closure, which at this point in time there is not.

Mrs Boyer: That's what I was just wondering, if the sense is that we're going to have closure before we had gone through the clause-by-clause.

Mr O'Toole: I appreciate that. I do have some minor modifications here that I would propose to the committee as a whole.

To section 3, which Mrs Boyer is describing right now, I did want to make sure we were clear on the completion of the clause-by-clause process, and I would like

to think that could be completed on April 26. That's the theory here that I'm proposing.

I had moved the "to begin." I've refined it now, so I am proposing an amendment to point 3 that the committee will meet on April 26 to complete the clause-by-clause of Bill 33.

The Chair: I need to perhaps seek some guidance from the clerk, but there is a practical problem with what you're suggesting. This is a committee that meets in the morning, and the committee can't meet while the Legislature is sitting. There are rules that govern debate in terms of how long anyone can speak to any particular issue that's on the floor, a clause or an amendment to a clause. There are rules that limit that so that it can't be prolonged and there can't be a filibuster, let's say, but those rules have to be respected unless there is direction from the House with respect to the length of time we have.

Normally, if it has to be completed that day, the instructions in a motion from the Legislative Assembly would say the committee will sit until it is completed. But with a morning committee, you run into the Legislature being convened at 1:30, so there are some practical problems with what you're trying to do with the subcommittee report.

Mr O'Toole: I understand and I suppose we may work through that. With your indulgence, I will just move one further clarification on point 4, that we would close off the amendments at 12 noon on April 25. The amendments would be then submitted by noon on April 25 and circulated to members of the committee by 4 o'clock on April 25, so that they would be aware of the amendments almost a full day before the committee was to meet.

Those are the two amendments to the subcommittee report that I'm moving, and I so move. That's formally being moved as amendments. Since we haven't voted on the report yet, if somebody wants to debate, that's up to the Chair.

The Chair: The amendment to number 4 is that all amendments should be given to the clerk by noon on Tuesday, April 25, and be circulated to all members by 4 o'clock that afternoon. Is that wording satisfactory?

Mr O'Toole: Yes.

The Chair: The intent of that is that no amendments would be accepted after that time?

Mr O'Toole: That's right.

The Chair: Perhaps we should add that. Maybe we should just start it off that—

Mr O'Toole: No amendments will be accepted after noon on April 25, and they will be subsequently circulated to the members.

The Chair: Just so you know procedurally, and I think this is your intent, this means that unless there is unanimous consent of the committee members during clause-by-clause to entertain another amendment that a member of the committee puts forward, no amendments except those that have been duly submitted and circulated will be entertained.

Mr O'Toole: Yes, and I agree with you. In the preliminary subcommittee meeting, the intention was to seek unanimous adoption of this bill, as amended, because we are interested in amendments—certainly from Mr Martin's perspective—and that was part of the subcommittee discussion. If there were, if you will, some small inference of change in the amendments, we may end up discussing those and in fact recognizing it as a reworded amendment, and we could unanimously adopt that in the context of the meeting that day, dealing with clause-by-clause. So I agree. It's still the intention to have a unanimous report.

The Chair: Mr O'Toole, with respect to your proposed amendment to section 3, I'm asking the clerk to seek some clarification and guidance from higher sources than us.

Mr O'Toole: Sure.

The Chair: It is my understanding that that amendment would actually be out of order, because what you're seeking to do is place a limit on the rules of debate. The rules of debate come from the standing orders of the Legislature, and committees can't do that in and of themselves. There is no direction from the Legislative Assembly for the debate on clause-by-clause to be truncated. You could achieve that with unanimous consent, but I think it may be out of order. But I don't want to make that ruling without some further advice.

Again, what would happen that day when we got into it is that we would begin the process. If there is debate that follows the rules and the time limits under the rules, I as Chair would be compelled to allow that. I'd be compelled to stop any debate that went longer than the allotted time under the rules for individual members. But there's no way to guarantee that clause-by-clause would be finished between 10 and 12 o'clock, when that committee adjourns or, if we continue to sit, by 1:30 when the Legislature sits. It may or may not; I can't predict that. And the committee cannot sit while the Legislative Assembly is sitting. So it puts me in a bit of a predicament as Chair as to how to facilitate what you want to accomplish without having direction from the House.

Mr O'Toole: Thank you, Madam Chair, and I don't want to prolong today's proceedings. First, how long would we be permitted to sit? Normally it would be from 10 o'clock till noon or 12:30—that's two hours—and then theoretically, after question period, 1:30 till probably 6 o'clock. That gives us roughly six hours to consider the amendments, and it's my sense that six hours in that one day would probably be appropriate. We could seek agreement for an extension from all three House leaders. But my idea, if I look at that as being a Wednesday, is to try to make sure this legislation gets to the House before the end of this session. That's theoretically the deal here.

It is a first reading bill. How it will proceed procedurally to second and third reading is still something I'm not aware of; you're more experienced than I am. But I think the intent is to get the legislation into the House.

The Chair: Not with this. This is the first time any committee has had a first reading bill, so it's a new

procedure. But it doesn't change the actual time frame. With respect to what you've said, this committee is authorized to sit between 10 and 12 on Wednesday morning.

Mr O'Toole: Only?

The Chair: At this point in time. Now again, to find out how the committee could be scheduled for another time—as you know, many people have seats on a number of committees, and other committees sit in the afternoon. It's not that that's impossible, but again, I don't believe it's possible on a motion in the committee. It would have to be by unanimous consent and/or by direction of the House to extend the hours.

What would normally happen is that on Wednesday the 19th and on following Wednesdays the committee would sit until it finished clause-by-clause, without any special direction. But again—are you still waiting for something?

Could I make a suggestion? I was going to suggest that we stand this down and move on to private bills, but your intent was only to be here for the subcommittee report. Is that correct?

1020

Mr O'Toole: I'll stick around. I enjoy this process. Now that we're talking about this—waiting for the clerk to give us some direction from the Oval Office, so to speak—we could start earlier, I suppose, and deliberate at 9 am. That would give us three hours. Quite honestly, it's my sense that there are really only two substantive areas—there may be some broad discussion. But that's three hours we would have.

I acknowledge that Ms Boyer has sat through all the hearings here. There are two parts, plus we have a whole day ahead of the amendments to air some of our concerns. Most politicians could talk from now till doomsday, heaven forbid. I'm just trying to provide some framework to get out of this and back into the House.

The Chair: In fact, the intent of the subcommittee, as you've indicated, is that next Wednesday's discussion is to see whether there is consensus, which may expedite the following process. Who knows how people will conduct themselves once we're into the process? As Chair, I haven't had any indication of a dispute of such a nature that there is an intent to delay, but you never know. I understand and appreciate what you're trying to do.

I have just had it confirmed, however, that I was right: The motion is out of order. I can't accept that amendment to clause 3. What we as a committee could do is agree to sit earlier that day, to begin the meeting earlier in the morning, which would provide a longer period of time and may accomplish what you want. Failing that, at the end of that day there is the possibility for the House to adopt some instructions to the committee that would deal in an efficient manner with what the government, or you, are attempting to do. I'm ruling that amendment to clause 3 out of order. I have given you some other options you can consider.

Mr O'Toole: I don't know how we deal with this. I guess we could move forward without adopting the subcommittee report, seeking further advice from my own caucus. We could deal with it on the 19th, because we're going to be meeting that day.

The Chair: What we could certainly do is—

Mr O'Toole: Table it for now.

The Chair: —table, or at this point delete section 3. I was going to say section 3 and section 4. You do want parties to have notice of the date for preparing and submitting their amendments. We don't want to leave that too late. I think it would be unreasonable to pass a motion on the 19th with respect to that date, if there's a possibility of doing that today. What you could do is stand down, or we could agree to delete the section on meeting on April 26 for clause-by-clause.

If you want, you could also indicate that we would meet on Wednesday, April 26, for clause-by-clause beginning at an earlier time in the morning, as you might propose, and you could speak to structure what happens on that day through a motion through the government House leader in the House without having to hold up the subcommittee report. The government House leader and the Legislative Assembly, as it sees fit, can give direction to this committee with respect to that.

Mr O'Toole: I just want to review: The intention here is to complete, and find some way of completing, this exercise by noon on the 26th. If I move that back, we've got next week, the 19th, which is a couple of hours, to debate this further—the critics for each party and the rest of it and, for that matter, even to discuss their amendments, what their serious issues are.

If we adopt this report as is, I suppose we could entertain, through the House leaders, some amendment to say we can't get there from here, if we still want a unanimous report, if that is the goal here. I felt we were that close. I saw these as rather friendly amendments, actually.

The Chair: I appreciate that. It's a question of the rules and what we as a committee can and can't do. We can't override the rules of the Legislative Assembly.

Just so you know, the House can direct this committee to sit at times other than Wednesday mornings. So if the government House leader wanted to put forward a motion and the Legislative Assembly adopted that motion for this committee to sit Wednesday morning, Wednesday afternoon, Wednesday evening or Wednesday until such time as the clause-by-clause is finished, the House can direct us to do that. We just can't do that as a committee. We can agree to meet earlier on Wednesday and to meet past 12 o'clock, but not past 1:30. I'm sorry, just until 12 o'clock, but we can agree to meet earlier. So if you want to start halfway down the road to achieving your goal by directing that the committee meet earlier on Wednesday and the committee members accept that, then that's part of what you want to do and the rest of the discussion you'll have to have with the government House leader.

Mr O'Toole: If I may, and I'm only trying to get this over with because there are people waiting for other

business, we have agreement on 1 because we're basically doing it. We have agreement on 2, which is to meet on the 19th. We have agreement on 4, I believe, which is to put some framework around when we accept and disburse the amendments. We have some difficulty with 3 at the moment.

So I would move right now that we adopt the subcommittee report steps 1, 2 and 4, as amended, and we will deal with 3 on the 19th, and we'll each get back to our House leaders. Does that sound appropriate?

The Chair: I'm going to try to give you the procedure to accomplish what you want to do. The first thing we would do is vote on these sections independently. If the committee is in favour of number 1, a positive vote would indicate that; the same with number 2. If the committee is not in favour of number 3, a defeat; you can't move an amendment to delete a section, but you can defeat that section. Number 4, you have duly placed an amendment, which I will get to in a moment to see if there's any other discussion on it. We would vote on the amendment on that and the amended section. Do you understand procedurally, to accomplish what you want?

Mr O'Toole: Yes, I understand.

The Chair: With the agreement of the committee, although there's a duly placed amendment on the floor right now and normally we would go to discussion of that, I'd like to deal with the sections in the numerical order that they're there because I think it's the fastest way to do it right now.

You have before you a subcommittee report with four recommendations. Is there any discussion on recommendation 1? All those in favour, please indicate. Those opposed? Carried.

Recommendation 2: Is there any discussion on that? Seeing none, all those in favour, please indicate. Opposed? Carried.

Recommendation 3: Any further discussion?

Mr O'Toole: Just for clarification for the members of the committee and myself, if we defeat this, what's the deal? What if we vote for it?

Mr Mike Colle (Eglinton-Lawrence): It's out of order. You can't vote for it.

Mr O'Toole: We can't vote for it if it's currently worded—

The Chair: Section 3 is not out of order. The amendment that was being proposed is out of order. If you vote for section 3, it would mean that this committee would be scheduled to meet from 10 o'clock to 12 on Wednesday, April 26, for clause-by-clause. If you wanted to amend the time, that would be in order. If the House subsequently passes a motion to give us a different direction, it would override what this committee has determined. In other words, if you pass it, Mr O'Toole, and you want to do something different, you're the government and you can do it, it's OK. Let me just double-check to make sure I'm giving good advice. The House can override that section.

Mr O'Toole: All right. I'll move an amendment that we start at 9.

The Chair: OK. The amendment is that the committee meet on Wednesday, April 26, from 9 until 12 for clause-by-clause review of Bill 33. Is there any discussion on the amendment?

Mrs Boyer: I agree with what you're saying. You're not saying to complete. It doesn't hamper the fact that we can come back another time to finish clause-by-clause?

The Chair: Not so far. Only a direction from the House would be able to do that.

Mrs Boyer: OK.

1030

Mr O'Toole: Chair, just a clarification here, through the clerk; I don't want to put you on the spot. What if I table this particular portion of the subcommittee report and then we deal with it on the 19th? Then I would go back to my House leader and to my minister, obviously, as I would expect the opposition and third party would, to see if we can find a way to complete this on the 26th. They may say, "Well, we'll find a time for the committee to meet, extend time or whatever," or, arguably, vote closure on the debate. Otherwise you'll be here for 100 years. We've got no way of getting out of this thing.

The Chair: Mr O'Toole, can I propose to you that you withdraw your amendment for the 9 o'clock starting time and that you simply move to defer consideration of this recommendation until Wednesday, April 19. Is there any discussion on that? No? All those in favour? Opposed? Carried. That item is deferred, and it will come back to us in greater clarity, I'm sure, on the 19th.

Number 4: An amendment has been moved that would change the words to say that no amendments will be accepted after noon on Tuesday, April 25, and all amendments will be circulated to members of the committee by 4 pm that afternoon. Any discussion on the amendment? All those in favour, please indicate. Opposed? Carried.

On the section, as amended, all those in favour, please indicate. Opposed? Carried. Done. Thank you very much. Thank you, Mr O'Toole.

Just for the record, Mr Coburn will now be rejoining the committee in place of Mr O'Toole.

I apologize to those of you who have been waiting. It's democracy in action. Sometimes it's slow, but we get there, we do.

We're moving now to consideration of bills.

PETERBOROUGH REGIONAL HEALTH CENTRE ACT, 1999

Consideration of Bill Pr3, An Act respecting Peterborough Regional Health Centre.

The Chair: The next order of business is Bill Pr3, An Act respecting Peterborough Regional Health Centre. Mr Stewart, MPP, is the sponsor for this. The applicants for Peterborough Regional Health Centre are represented by Sawers Liswood Hickman Bullivant Dolan Watts LLP. Kathy O'Brien is the solicitor. We'll ask first if Mr Stewart would like to make any opening comments and introduce this bill.

Mr R. Gary Stewart (Peterborough): It is indeed my pleasure to be able to sponsor this bill, An Act respecting the Peterborough Regional Health Centre. The Corporation of the City of Peterborough and the board of governors of the Peterborough Civic Hospital have applied for special legislation to change the name of the hospital corporation, its objectives, its powers and the composition of the board, as well as some additional things.

As you mentioned, Kathy O'Brien, solicitor for the hospital, is with me. I'm going to let her make some comments regarding this act.

Ms Kathy O'Brien: Good morning. My comments will be brief this morning. I just want to provide you with a background of the existing legislation that governs Peterborough Civic Hospital, which is now operating under the name Peterborough Regional Health Centre, and then just explain the two main reasons why this act is before you this morning.

The Peterborough Civic Hospital was incorporated by a special act back in 1945. It has been amended from time to time, and it currently provides for the composition of the board of directors of the hospital. As required under the existing act, the board includes ex officio municipal appointees, including the mayor of the city of Peterborough and the warden of the county of Peterborough. In addition, two directors are appointed by the council of the county of Peterborough and nine are appointed by the council of the city of Peterborough. Therefore, the board of the Peterborough Civic Hospital is essentially municipally appointed.

The 1945 special act that incorporated the hospital also authorized the city of Peterborough to acquire lands for the civic hospital and to erect the hospital building.

There are two reasons the act is before you today. The first is that in the mid-1990s, Peterborough Civic Hospital realized that it wanted to change its governance structure and move to eliminate the municipal appointment of directors. The reason for that was to ensure that the hospital's board was representative of the community the hospital served. The catchment area of the hospital, which is the community served by the hospital, extends beyond the boundaries of the municipalities that represent Peterborough. It is, in fact, a regional catchment area and the hospital wanted that to be represented on its board.

In 1998, the Health Services Restructuring Commission reinforced this view of the hospital. The HSRC, as you're probably aware, was mandated in 1996 to review and restructure public hospitals in Ontario. It has the power under the Public Hospitals Act to direct hospitals to restructure, amalgamate, change their governance etc. In March 1998, the HSRC issued a restructuring report for the region that included the Peterborough Civic Hospital and essentially agreed that the hospital should indeed move away from a municipally appointed board.

In June 1998, the HSRC issued legally binding directions that bound the directors of the hospital to implement a new governance structure. That new governance

structure would remove the municipal ex officio directors from the board and would create a new process for the appointment of directors. Those directors would no longer be approved or appointed by municipal or regional government. Essentially, the act before you implements that change in governance. The board would no longer be municipally appointed. It would be elected by an open membership as provided in the by-laws of the hospital.

The second reason the act is before you this morning is that coincidental with the hospital essentially assuming control of its own governance, it makes sense for the hospital to assume control of the property that it uses in providing health care services in the area. It wants to move to a structure where, like most public hospitals in Ontario, it not only elects its own directors but it owns its own property as well. So the second main portion of the act transfers the real property on which the hospital is located and that's used for hospital purposes, and personal property used for hospital purposes, to the hospital. The act actually effects that legal transfer. Just so you know, after the transfer any property that was donated or held by the city in trust for the hospital will remain held in trust by the hospital.

So for those two reasons, to implement community representative governance and to transfer title of hospital property to the hospital corporation, this act is before you. We ask that the standing committee on regulations and private bills vote to move this bill toward second reading.

The Chair: I'm sorry if I missed it in your presentation: Any indication of the position of the municipality, the corporation of Peterborough, with respect to this?

Ms O'Brien: They actually signed an agreement back in 1994 fully supporting this move.

The Chair: Are there any interested parties who have attended to speak to this bill? Seeing none, Mr Coburn, parliamentary assistant, are there any comments from the government?

Mr Brian Coburn (Carleton-Gloucester): No. There are no objections at all to this bill.

The Chair: Committee members, are there any questions and/or debate? Yes, Mr O'Toole. Just to indicate that you are participating not as a member of the committee.

Mr O'Toole: I'm participating out of interest only. Yes, it shows just how sheltered my life really is. Having come from Peterborough, I have a unique interest in it. Does this mean that the member, Mr Stewart, will in some way have his name attached to this action? I know he's a great contributor to the history of Peterborough. And, no, I'm not being flippant.

Have you resolved the property issues with respect to the other hospital in Peterborough?

Ms O'Brien: With respect to St Joseph's hospital?

Mr O'Toole: Yes.

Ms O'Brien: There was an asset transfer agreement that has been implemented already.

Mr O'Toole: That's already in place?

Ms O'Brien: Yes. And that's pursuant to the directions of the HSRC.

The Chair: Any further questions from committee members? Any comments or debate? Are members ready to vote on the bill? There are no amendments being placed? No.

Shall sections 1 through 11 carry? I declare that carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Yes. Thank you.

The committee has finished with this bill. It will be reported out to the House probably this afternoon, and then a question of second reading and any further dealing with the bill is up to the procedures with the government House leader.

Thank you very much for your attendance.

1040

ROSS MEMORIAL HOSPITAL ACT, 1999

Consideration of Bill Pr5, An Act respecting The Ross Memorial Hospital.

The Chair: The next order of business is Bill Pr5, An Act respecting The Ross Memorial Hospital. Mr Gary Stewart, MPP, is the sponsor. The applicant is the Ross Memorial Hospital: McQuarrie Hill Walden McLeod, represented by Jennifer Sleep today. Welcome to both of you.

Mr Stewart, would you introduce the bill, please, and introduce the applicant.

Mr Stewart: I will. Again, thank you, Madam Chair. It is my pleasure to sponsor this bill, An Act respecting The Ross Memorial Hospital. I'm doing it on behalf of my colleague the member from Victoria-Haliburton, Mr Chris Hodgson. As has been indicated, with me is Jennifer Sleep. The board of governors of Ross Memorial Hospital has applied for special legislation to empower it to acquire and dispose of real estate. We'll let Ms Sleep speak to the bill.

Ms Jennifer Sleep: I'm going to begin my submissions by setting out the events which necessitated this application for the private member's bill before you. I will then set out the purpose and intent of the legislation.

To begin, the Ross Memorial Hospital was incorporated by a special act of the provincial Legislature, An Act respecting the Ross Memorial Hospital, which was assented to on May 22, 1903. The act was subsequently amended in 1954 and 1964. A trust deed executed by James Ross on January 9, 1903, forms the schedule to the 1903 act. The purpose and intent of the trust was to convey certain lands and the hospital built by Mr Ross, in trust, for the benefit of the people of the county of Victoria and the town of Lindsay.

The act also sets out the powers of the corporation including, in paragraph 10, the power to purchase real property. However, paragraph 12 of the trust deed states,

"There shall be no power to sell or mortgage or place a lien upon the said hospital."

Until 1993, the Ross Memorial Hospital transacted business unaware of its restricted power to deal with real property. In 1993, the hospital entered into an agreement of purchase and sale with the town of Lindsay to convey a small piece of vacant land along its south boundary to the town. The town acquired the land to facilitate a road-widening, an improvement of a main intersection in Lindsay. After searching title and reviewing the 1903 act, the town solicitor concluded that the hospital was not legally empowered to convey the required land. The town eventually acquired the land through expropriation. It became clear at that time that the hospital required that its powers to deal with real property be broadened.

The purpose of the proposed bill, An Act respecting The Ross Memorial Hospital, 1999, is therefore to broaden the powers of the hospital to deal with real property; specifically to purchase, lease, mortgage or sell its property.

With respect to the purchase of real property, paragraph 10 of the trust deed specifically empowers the hospital to purchase property. The proposed legislation therefore confirms this power.

The power to lease space within the hospital as well as hospital lands is required to ensure that a number of health-related services are readily accessible to the people of Lindsay and to Victoria county. These services complement those currently provided by the hospital.

Presently the hospital leases space to Parkway nuclear medicine, Lindsay rehabilitative health, home care and palliative care.

The hospital may, in light of its future expansion, require the power to lease its land to other health-care-related services and facilities. The power to mortgage its real property is required in light of the Health Services Restructuring Commission's directive and the present need of the hospital to expand its facilities. In order to fund the local share of the capital cost of facility expansion, the hospital may require short-term financing, which would likely be in the form of a mortgage.

Finally, the power to sell is required in the event that the hospital wishes to convey a portion of its land in order to purchase or to trade for other land with preferred proximity. Further, in the event of future improvement by the town of Lindsay to surrounding roadways, the power to convey hospital property would be required.

As you will see, the present legislation empowers the board of governors to "purchase, lease, mortgage, sell or otherwise acquire or dispose of real estate where" it "declares that the transaction is needed for the better operation of the hospital." Further, the proceeds of any of these transactions are to "be applied to the purposes of the Ross Memorial Hospital or to similar charitable objects."

The purpose and effect of the legislation is therefore consistent with the intent of the original trust deed, that is, to provide accessible health care services to the people of the town of Lindsay and the county of Victoria.

Subject to any questions the committee may have, those are my submissions.

The Chair: Could you provide the committee with any knowledge you may have of how consistent this is with the type of legislation governing other hospitals in the province?

Ms Sleep: I'm not sure I can answer that question, but I think one of the original concerns was that the property was conveyed to the hospital in trust and that any amendments to the act that affected the trustee be consistent with the original intent of the trust. I cannot answer whether it's similar to other hospital legislation.

The Chair: I raise it not by way of putting any concern or objection on the table. My experience over the past year is that hospitals like St Michael's and others have used these provisions not only for the purpose of expanding or restructuring the hospital but for the purpose of investment in land acquisitions. It has not been the primary focus in the business of a hospital board of management. Often, there have been problems that have resulted from that. I just wondered if this language was consistent language that you've seen in other pieces of legislation governing the operation of hospitals.

Ms Sleep: I don't know.

The Chair: Thank you. Are there any interested parties who have come forward on this? Seeing none, committee members, do you have any questions for the applicant? I'm sorry, let me just ask Mr Coburn if the government has any comment.

Mr Coburn: No. We received no objections.

The Chair: Are you ready to vote? OK.

Shall sections 1 through 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? It shall be done.

Thank you very much. We appreciate your attendance here today.

TALPIOT COLLEGE ACT, 1999

Consideration of Bill Pr16, An Act to incorporate Talpiot College.

The Chair: The next order of business is Bill Pr16, An Act to incorporate Talpiot College. The sponsor is Mr Mike Colle, MPP. The applicants, Beth Jacob Seminary; Mr Edward Wells, barrister and solicitor; Rabbi Posen; and Rabbi Stefansky are present with us here today. Thank you for joining us.

Mr Colle, would you like to make some introductory comments and introduce the applicants, please.

Mr Colle: With me today I have Rabbi Posen, Rabbi Stefansky and their legal counsel, Mr Edward Wells.

The bill incorporates an already existing seminary, the Beth Jacob Seminary, in my riding. The purpose for incorporation is to operate a post-secondary educational institution in Jewish and general studies for Jewish women, and to grant degrees.

The applicants represent that it is unincorporated and has been operating a post-secondary educational institution for Jewish women since 1973. So in essence they want to be incorporated and the model they're using is one that some of the members may be familiar with. In 1998 the House passed the Redeemer Reformed Christian College Act. That was in Ancaster and I think it was MPP Skarica's introduction. So that's what the bill is modelled on.

Those are my comments. I don't know if Mr Wells or one of the rabbis would like to comment.

1050

Mr Edward Wells: First of all, Madam Chair, it's Bill Pr16. I believe it was titled Bill 16 on the agenda.

The Chair: Just give me a second here. Yes, I'm sorry. I called it forward as Pr16, so we're fine. Thank you.

Mr Wells: The reason we're here is because the degree-granting act of RSO 1990, chapter D.5, prohibits any person from granting degrees or operating a university unless they're authorized by a statute. That's why we're here today. I'd like to ask Rabbi Posen to make some comments and tell you a little bit about the seminary.

Rabbi Yosef Posen: Madam Chair, members of the committee, just a brief background to the Beth Jacob and Talpiot College application. The Jewish community was established in Toronto prior to Confederation in 1867, with the post-Second World War era witnessing the flourishing of a new, thriving community based on the influx of Orthodox Jewry. During the 1950s, Jewish elementary schools became firmly established within the community. In 1960 Beth Jacob High School was started as the first Jewish high school for girls in Ontario. Graduates of the Beth Jacob educational system received comprehensive schooling in Jewish and secular studies, and in 1973 a post-graduate institute, Beth Jacob Teachers Seminary, was brought into existence to meet the expanding educational needs within the Orthodox Jewish community.

Further expansion occurred in 1996 when Beth Jacob Academy was founded as an affiliate to the existing Beth Jacob institutions. The academy provides a post-high school, college-level education for Jewish women. The student body consists primarily of young Jewish women with substantial prior Judaic and secular education. The focus, perspective and student body of Beth Jacob Academy is unique to not only Toronto and Ontario but also the whole of Canada.

In order to further the goals of the Beth Jacob ideal and to provide Orthodox Jewish women with a suitable, rigorous, continuing education, the Talpiot College application for a degree-granting charter has been made. Talpiot College will not simply be another program offering options in post-secondary education; Talpiot will provide a synthesis of the eternal ideals of Beth Jacob, fused together with a challenging academic curriculum as a viable means of obtaining a degree.

The program will be unique in that it will offer courses especially structured for the committed Jewish woman which enable her to further her Torah knowledge and Jewish philosophy in a format not commonly available for women.

The Chair: Are there any further comments from the applicants?

Mr Colle: I just have one request. Given that Beth Jacob seminary is a charitable non-profit organization, if it's possible, there's precedent whereby the government or the Legislative Assembly could waive the application fee and the fee for printing of the bill. It would help them continue to operate under the great financial stress they have, as all schools do.

The Chair: The committee can give consideration to that, Mr Colle.

Mr Colle: Thank you.

The Chair: Are there any interested parties who've come forward on this bill? Seeing none, Mr Coburn, parliamentary assistant, does the government have any questions or comments?

Mr Coburn: No objections from any of the ministries. I have one question with respect to colleges and universities. In terms of awarding degrees and diplomas, does this have any bearing on our education system in Ontario or is it strictly from within the seminary itself? Am I making myself clear with the question?

The Chair: Are you asking what the status of the degree is?

Mr Coburn: Yes, in relationship to the degrees given out by colleges and universities.

The Chair: Public colleges and universities.

Mr Coburn: Public colleges.

Mr Wells: First of all, this has been approved by the Minister of Training, Colleges and Universities. In fact, the college will be the same as U of T in granting degrees, except it will be on a different focus.

Mr Coburn: It was just of personal interest. Thank you.

The Chair: Committee members, any questions or comments?

Mr Stewart: With all due respect to the organization, the rabbis and everybody else regarding Mr Colle's comment about excluding this application from the cost to print the bill or whatever, I suggest we could be setting a precedent on that. We've had two bills come forward earlier which I believe border on charitable types of organizations, and I would not be supportive of that.

The Chair: Could I just offer this for the committee's advice. Contained within the standing orders of the Legislative Assembly is a provision that sets out that charitable organizations may ask for remittance of these fees and for the fees to be waived. There is precedent for committees to have voted for waiving fees on previous occasions. Let me just give you the exact reference. Section 80, which deals with private bills:

"(d) Where a private bill relates to a charitable organization within the meaning of the Income Tax Act (Canada), the standing committee on regulations and

private bills may recommend that the fee paid under clause (a) be remitted and, if the recommendation is approved by the House"—the committee makes a recommendation and it's the Legislative Assembly that would make the final determination on that—"the remitted fee shall be applied to reduce any costs payable under clause (b) and the committee may, having regard to the circumstances, recommend that all or part of the costs payable under clause (b) be waived and, if the recommendation is approved by the House, the costs shall be waived."

The application fee is about \$150 and then there are printing costs. It's difficult to tell you exactly what that is. We're talking in the range of a few hundred dollars, not a substantial cost beyond that.

At this point in time, there's no motion before us. There's been a request from the applicant. Is there a member who wishes to place a motion to waive fees and printing costs, the recommendation to the House for acceptance of that?

Mrs Boyer: I would place the motion that requests that.

The Chair: OK. The motion is now before us. Mr Stewart, you look like you wanted to say something else on that.

Mr Stewart: Yes, just a question. If this committee does not approve the waiving of these fees, the organization can apply on their own directly to the Legislature, right?

The Chair: There's no mechanism—

Mr Stewart: Does it have to be approved by this committee?

The Chair: It has to be approved by this committee because it's contained within the standing orders and the powers of this committee. Our approval of it, however, is not the final say. As with all things we do here, it would become part of the report from this committee back to the Legislative Assembly and it would be up to the Legislative Assembly as a whole to say yea or nay to that recommendation.

Mr Stewart: Fine.

Mr Colle: Just a comment, Madam Chair. The seminary receives no government funding whatsoever, directly or indirectly, from municipalities, from the federal or provincial government. For the other institutions that were here, I'm sure there is some funding from other levels of government. It's not unusual that this request be made, and I hope the committee considers that. It's not a huge amount of money, but it is just something that they basically have made a request for because it is an extremely challenging educational institution to run financially, essentially on donations and tuitions. That's why I've made that request on their behalf and I hope you consider that.

Mr Garfield Dunlop (Simcoe North): Just for clarification: Are you saying, Madam Chair, that one of the hospital associations that was here earlier could actually write in and ask for the same thing?

The Chair: If they are a charitable organization as defined under the Income Tax Act, they may request it of the committee. Neither of them did. It is normally smaller, non-government institutions, charitable institutions, who make that request of this committee, such as the group that's before us today.

Mr Dunlop: Thank you.

Mr Coburn: Maybe as a point of information, when this happens on committees it puts everybody in an awkward position. If that provision is there, can you maybe give us information at a future session on how many of these applications would have come forward over the last four or five years, and how much has been recognized as being absorbed by the Legislature, just to give us some examples. That provision is there and it comes forward and there's a request every time, and we tend to agree with it every time. I guess my concern is, why do we go through this discussion? If that's going to be the situation for everybody, there may as well just be a blanket acceptance of it.

Clerk of the Committee (Ms Anne Stokes): Not every organization is a charitable organization.

Mr Coburn: I mean within the charitable rules. How many charitable organizations have come in here, and how many have requested this?

The Chair: We could certainly ask research to pull that together for us. I think it's a useful bit of information for committee members. As committee members, there is turnover and people are not familiar with the precedents. In general, it would be my advice that if we have it handy

and we're made aware that a request is going to come, it could be circulated in advance to committee members to make it easier for them to make a judgment on it. We will bring that forward for the information of committee members at a future meeting.

Any further discussion or debate on the motion to waive fees? Seeing none, all those in favour, please indicate. Those opposed, please indicate. The motion is carried.

With respect to the bill itself, are there any other questions or comments? Are you ready to vote? We're dealing with Bill Pr16, An Act to incorporate Talpott College, sponsored by Mr Mike Colle, MPP.

Shall sections 1 through 16 carry? Carried.

Shall schedule 1 carry? Carried.

Shall schedule 2 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Agreed.

I thank the applicants for coming forward and spending time. Mr Colle, thank you very much.

That concludes the scheduled business on the agenda, and there's no further business. Mr O'Toole is gone, so we can probably wrap up quickly now.

Interjections.

The Chair: Mr Murdoch moves adjournment. All in favour? Carried.

The committee adjourned at 1102.

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T-10

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Official Report of Debates (Hansard)

Wednesday 19 April 2000

Journal des débats (Hansard)

Mercredi 19 avril 2000

**Standing committee on
regulations and private bills**

Subcommittee report

Franchise Disclosure Act, 1999

**Comité permanent des
règlements et des projets
de loi privés**

Rapport du sous-comité

Loi de 1999 sur la divulgation
relative aux franchises

Chair: Frances Lankin
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 19 April 2000

Mercredi 19 avril 2000

The committee met at 1008 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Ms Frances Lankin): We will call the meeting to order. The first item of business is to deal with an outstanding matter from the subcommittee report. The subcommittee met on Wednesday, April 5, 2000, and there was a discussion with respect to the method of proceeding on Bill 33. At last week's committee meeting, on April 12, three items from that subcommittee report were carried, those being that the committee meet last week to consider private bills, which was done, and that we meet today to hold discussions on the information that was gathered in the committee hearings to Bill 33.

As you know, the structure for today's consideration will be each caucus making an initial presentation of up to 20 minutes, and a second hour that will allow for discussion and questions. There are technical staff and policy staff from the ministry here who are also available if there are questions that committee members need assistance with. Item 3 was deferred—we'll come back to that—and item 4 was the time line on submission of amendments to Bill 33. Those amendments, again as a notification for committee members, must be in by noon on Tuesday, April 25. None will be accepted after 12 o'clock. The clerk will circulate all amendments to committee members by 4 o'clock that afternoon.

The outstanding item from that subcommittee report is item 3: that the committee meet on Wednesday, April 26, 2000, for clause-by-clause review of Bill 33. I'd like to ask if at this point in time Mr O'Toole would like to move that clause or any amendment to that clause.

Mr John O'Toole (Durham): The intention of the clause would be to complete the deliberations on Bill 33 on the April 26. If that's what this wording means to the members of the committee, then I would so move that particular clause.

The Chair: We can't give an interpretation that's not there on the face of the words. The words indicate "that the committee meet on Wednesday, April 26, 2000, for clause-by-clause review of Bill 33," point-blank. As I indicated last week, when there was an attempt to move an amendment that would limit or place a time line on that consideration, I ruled that amendment out of order. The directions have been given to this committee by the Legislative Assembly, by the House. Those are para-

mount unless there is a change in direction or unless during the course of consideration of clause-by-clause, committee members themselves move closure on consideration in an appropriate way in accordance with the rules of order. There is no way for this committee in advance to limit the scope of that discussion in clause-by-clause.

Mr O'Toole: Fine. Then I continue to defer that particular clause. Hopefully, we can come to an understanding by the end of this particular session today and not be in breach of any of the standing orders. Clearly, the intention is not to deliberate too much longer, but not breach the orders by trying to invoke some kind of closure, and also to satisfy Mr Martin—and other members of the committee; not to centre anyone out—that we can come to a consensus here. Failing that, I suspect I would be going back to our House leader to see how we can go forward in an attempt to have a unanimous report without invoking some kind of closure.

The Chair: If I could make a suggestion to committee members, it sounds like there may still be some contention around how we proceed with respect to that item. It may be more or less contentious by the end of this morning. What I would like to suggest is that we proceed with the discussion on the bill and that at the end of that discussion and in sufficient time before 12 o'clock, we return to consideration of the subcommittee report. You may or may not be more informed by the way the discussion goes with respect to how you feel with that item. Is that satisfactory for members? OK.

Could I have a motion to stand this down until the end of this morning's meeting.

Mr Tony Martin (Sault Ste Marie): So moved.

The Chair: All those in favour? Opposed? That's carried.

FRANCHISE DISCLOSURE ACT, 1999

LOI DE 1999 SUR LA DIVULGATION
RELATIVE AUX FRANCHISES

Consideration of Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors / Projet de loi 33, Loi obligeant les parties aux contrats de franchise à agir équitablement, garantissant le droit

d'association aux franchisés et imposant des obligations en matière de divulgation aux franchiseurs.

The Chair: Let's move on to item 2, consideration of Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors. This morning, as you know, is an opportunity for each of the three caucuses to present some preliminary points of view with respect to the findings the committee gathered during the public hearings into Bill 33.

Each caucus has up to 20 minutes for its presentation. The presentation can be made by an individual or shared among individuals within that caucus. I'd appreciate it if you gave me some indication if you intend to share the time, but the allocation of that is up to you. At the end of that, we will move into a general discussion. We'll begin the presentation with the government caucus. Mr O'Toole, do you intend to start?

Mr O'Toole: No, I'd sooner pass and start with whichever other caucus is prepared to begin.

Mr Martin: I'm willing to start.

The Chair: Mr Crozier, do you defer as well to the expert? Mr Martin, would you like to begin your presentation?

Mr Bruce Crozier (Essex): Not to single out any member.

The Chair: Of course not.

Mr Martin: First of all, I want to go on the record by saying thank you to everybody who participated. I thought it was a rather positive, constructive and full discussion of an issue that is very important to a lot of people across this province, to the economy of this province and to some communities in this province which have within their boundaries some of the folks who are under some duress and feeling some stress at this time, because they have no real avenue of address for some of the difficulties they are experiencing as they try to relate to each other to do business so that each of them might realize the benefit, the profit and the success they thought was there when they entered or took on the possibility of the role of being a small business person in this province.

Certainly the government has been co-operative. Before we started, I had a very positive meeting with the minister around some of the issues that I suggested we would probably hear a lot about as we went through the hearings, and the commitment by him to be open and willing to sit down and work out some arrangements so that in the end we could do something helpful with this bill.

I also want to say to the members of the official opposition and of the government that I appreciated the contribution each of you made in this effort. The preparedness, the questions and the listening that went on will hopefully lend in the end to all of us finding a way to do the right thing in this instance.

I also want to thank the staff, particularly Anne Stokes and Susan Swift, who worked so very hard to make sure this was a good experience. Given that, because of sick-

ness and other things, we went through two or three chairs that week, I thought both of them did a super job keeping us on track; Anne, in particular, making sure everything happened as it should and that everybody had a fair opportunity both to present and ask to questions and participate in the discussion. Of course, Susan Swift provided us with a ton of material: research that was done to make sure that any questions we might have and any information we needed was there and we could refer to it, and that would be helpful in the long run.

I want to say that there were others who participated and helped out a lot as well, certainly those who came forward, some at great risk to themselves and to their businesses, to share with us what's going on and what went on in their lives. Some people had no need to come forward, because it was a bad chapter in their lives that they were trying to forget and move on from, but they knew they couldn't just leave it, given the opportunity to come forward and speak to us here, without contributing some of their experience to perhaps putting something in place that would be helpful to others so they wouldn't find themselves in the same boat, as life unfolded in this province. They have to be commended and thanked profusely because of the risk they took, the effort they made and the information they shared.

For me, personally, Les Stewart, who perhaps to some may present as somewhat obsessed with this issue, but because of his own personal experience and the fact that he put his shingle out there, a lot of people call him when they find themselves in difficulty in franchising and share their stories with him—being the person he is, very conscientious and of great integrity, Les cannot just let it lie, let it sit and not deal with it and bring it someplace where perhaps something could be done with it. He has probably contacted all of you at least a million times and certainly has worked very actively with me to make sure I had everything I needed to make the case here for some things to happen.

That brings me to the reason for this morning, which is to talk a bit about what we heard and to put on the table what I feel needs to be done, and in fact to draw the line in the sand that needs to be drawn re how much I am willing to compromise in this so we can find some consensus and move forward with a bill we can get through the House in reasonable time to be helpful to the folks out there who are waiting with bated breath for this to actually happen.

1020

All of you will know from having read the material that this issue goes back quite some way. It was in the late 1960s and early 1970s that a report was called for by the then Department of Financial and Commercial Affairs, under the leadership of Arthur Wishart, to deal with the "evils of franchising." That's how it was described in the Grange report. I suggest to you that those evils still exist, because nothing has been done since then. That report was tabled and shelved. In the meantime, though, the franchising sector of industry has grown in leaps and bounds, to a point now where—if you

just give me a second here, I'll share a couple of statistics with you. With all this paper, it was bound to happen that sooner or later I would get a little confused and mixed up. Here we are.

Franchising in Ontario has grown tremendously. In Ontario alone there are some 40,000 franchisees. In Canada there are 76,000. This represents an investment of \$4 billion in Ontario and \$7.6 billion in Canada. This is investment by franchisees in the industry. Most of the money in the franchising industry is initially invested by the franchisee—retail sales of \$45 billion in Ontario and \$90 billion in Canada, an employee factor of some half a million people in Ontario and almost a million in Canada. It is a very significant sector of business in Ontario and, I think, deserves our full attention and effort to make sure we put in place a regulatory regime that creates fairness.

We're not talking here about giving one partner some undue advantage over the other. What we're talking about is correcting a history of undue advantage being taken. I share with you one more time—and John will appreciate this—the big books that were put together primarily by Les Stewart, which are a compilation of all the articles that have appeared in newspapers across this province over the last five to seven years. There are two volumes, and each of you have them. They represent the stories of some 4,500 families who have been affected, mostly negatively, in some way in this province over the last five or six years as the franchisor moved to take advantage of the franchisee by not living up to, if not the agreement, then the spirit of the agreement they signed when the contract was entered into.

This morning I want to, for your help, because I know some of you were probably feeling somewhat at a disadvantage through the hearings—I apologize. I had the index to this and was able to make references and cross-references. We've gone out and put together another book, which you'll have to take home and do some bedtime reading with, that connects these stories and gives you some commonalities. It helps you go through it in a way that makes some sense in terms of putting the story together and putting the jigsaw puzzle together so that you might, at the end of the day, understand why I am going to be so determined, particularly in three areas, to have something put forward by way of amendment to this committee that will complement and add to what the government has brought forward in terms of Bill 33. If you would pass this around, I'd appreciate that.

Having said that, I want to say that this latest round of discussions and activity we are participating in was initiated some six years ago as a result of the very difficult Pizza Pizza debacle that happened in the province. There was some activity at that point. A colleague of mine, a predecessor of mine, Jim Wiseman, brought forward a bill and tabled it in the House. That initiated a study by the then Ministry of Consumer and Commercial Relations and Minister Marilyn Churley. A group of people was brought together from the industry to talk about this. A report was done. It was tabled by the ministry in 1995 with the then Minister of Consumer and

Commercial Relations, who I believe was Mr Sterling, and then passed on to Mr Tsubouchi.

In the meantime, I picked up where Mr Wiseman left off. I was encouraged by some very difficult unfoldings in my own community where Provigo and Loeb decided unilaterally to turn some 25 to 30 of their grocery stores into corporate stores without any real conversation or negotiation about recognition of investment and those kinds of things. Following that there was the Mary Carlucci story that I brought to the Legislature, which some of you may remember. She was a young woman out of our community who had done an excellent job of building a small business into a real powerhouse—good name, good corporate citizen, doing well. She built the business up from under \$1 million in activity in a year to some millions of dollars. She was summarily dismissed at some point.

Just to give you an idea of how this happens, she was told that there would be a meeting to talk about marketing in a local hotel down the road. While she was away they moved in and changed the locks on her door and took over her cash registers. This is the kind of thing that's going on.

In some instances, in the Loeb-Provigo takeover, for example, we had small business people in this province and their families actually sleeping in their stores at night so that the parent company wouldn't come in while they were away and change the locks and take the store over. That's the environment; that's the atmosphere within which franchising is happening in this province.

There are other stories. Certainly the Pizza Pizza one speaks of the personality of some of the people who are doing franchising from the franchisor perspective in this province. A person who was accused of and found guilty of fraud in Florida comes to Ontario and takes over the Pizza Pizza franchise. There's another story unfolding in the province at the moment, about Chemwise—it was written up in the Toronto Star just a week or two ago—where again we have somebody who had spent some time in jail now running a franchise operation and taking advantage of unsuspecting individuals who simply want to do business, who simply want to invest some money, work hard, take advantage of the good economy that's happening out there, make a profit, and set something up for themselves and their families as they go down the road.

Bill 33, as far as it goes, is a good first step in this whole piece. I suggest to you that there are lots of things in Bill 33 that are also included in the bill I've tabled three times now in the Legislature, Bill 35. I can live with that, but it needs to go further, in my mind. If it doesn't go further, we will do dishonour, in my view, to the stories we heard over the four days that we crossed the province earlier in the year.

Disclosure and the right to associate, however important and necessary, would not have been helpful in the stories we heard. It would not have been helpful in the Loeb-Provigo instance, it would not have been helpful in the Pizza Pizza debacle, and it would not be helpful right now in the Chemwise situation that was in the Toronto

Star, because those folks need redress after the agreement is signed. This is an instance where the franchisor decides not to live up to the agreement they signed. Short of going to court and spending a ton of money they don't have, going up like David and Goliath against a big corporate entity that has a ton of money—I'll tell you, from talking to some of the folks in the industry, the big corporations, the franchisors, are not adverse to telling these folks, "You can take us to court, but you'd better have lots of money and lots of time, because if you don't, we'll do you in eventually."

1030

Disclosure and the right to associate, however important and necessary, would not have been helpful in these incidents and the many others we heard during our four days of hearings.

It is still clear and obvious that some mechanism of dispute resolution is necessary.

It is also necessary, in my view, to define the relationship in a manner that allows franchisees to source product at their discretion except where trademark is an issue.

Just very briefly—I probably have about two or three minutes left, I think—if we don't do this piece, we will not have recognized a very troubling reality that's out there today, which is that small stores are tied in to distribution systems now that limit ever more as each day goes on their ability to actually make a profit. Not only that, but it is affecting the ability of small and local producers, and we heard this in spades in Sault Ste Marie, to get their product on to the shelves of some of the major stores in their own communities so that they can actually make some money and do some business. If we allow this to continue, it will in my view kill local economies, and that will be sad and will not add to the rooting of the very good economy we're in today in communities and allow smaller operators to take advantage of that.

I will also be asking that "commercially reasonable" be added to the "fair dealing" section because it's necessary and was recommended by several presenters at the hearings.

To ensure correct and timely tabling of disclosure documents that can be easily accessed and vetted, it will be necessary that some vehicle to accept and be responsible for these documents be in place. A reasonable and convenient possibility for this function would be an extension of the role of the securities commission as suggested by Mr Nori in Sault Ste Marie.

There were many excellent recommendations put forward by witnesses during the hearings including the need to regulate termination and renewal of contract clauses in agreements and the need to make it mandatory that franchisors recognize and deal with franchisee associations, because that's what Bill 33 is recommending, that franchisees be allowed to associate. But if the franchisors aren't willing to recognize those associations, what's the point? That is what a number of presenters asked when they came.

The NDP caucus will be tabling amendments to improve on Bill 33. We will be recommending enhance-

ments included in Bill 35 that we feel were called for by a majority of the deputants who came before the committee. Central to these will be a vehicle to accept, vet and manage disclosure statements similar to or an extension of securities commissions; a dispute resolution mechanism; a provision containing the right of franchisees to source product at their discretion outside of a registered trademark.

We will be willing to discuss methods of including these provisions in Bill 33 but will not concede the underlying principle in each.

If these very fair and reasonable ends are met, then we will be putting forward an amendment to have the title of the act changed to read An Act to require fair dealing between parties to franchise agreements, and the short title to read the Arthur Wishart Act (Fairness in Franchising), 2000.

As an addendum to this, I will also be recommending to the committee that we seek standing before the Federal Competition Bureau concerning the grocery industry in Ontario.

I have a copy of a brief summary of the report that I will share with everybody as well, so that we can have a look at it and know what it is that we're saying is absolutely necessary if we're going to have some consensus on this.

The Chair: That would be helpful, Mr Martin. Would you like to give that to the clerk? She can arrange for a copy of that, or have you brought copies?

Mr Martin: I've got copies.

The Chair: Terrific. Thank you very much.

Mr Bill Murdoch (Bruce-Grey): This Arthur Wishart, is he the guy who was Attorney General once?

Mr Martin: Yes. He was my predecessor, a member for Sault Ste Marie and a member of the Robarts government and the Attorney General, after he was minister of consumer and financial affairs.

Mr Murdoch: He's dead now, is he?

Mr Martin: Yes.

Interjections.

The Chair: If that becomes a contentious item in terms of an amendment to the debate, we could have that debate at that time. Mrs Boyer, did you have comments, or Mr Crozier?

Mrs Claudette Boyer (Ottawa-Vanier): Yes. Mr Crozier will share some of my time.

The Chair: You have 20 minutes and I'll let you know when there are about five minutes left.

Mrs Boyer: First of all, I want to say thank you. It was great to have this as my first opportunity to go to hearings. I thought it was great. I'd like to say thank you both to the staff and the MPPs from other parties. I thought it was very instructional for me. Maybe we should have that more often, going around the province. They were succinct, and we let our parties be one group.

I have to say that during the presentations we were all made aware of the difficulties encountered by many who have been involved in franchises. The number of presentations that brought to light serious problems allows me

to conclude that these are not isolated incidents. We had people who were so aware that it wasn't going the way they wanted to have it, they managed to be in camera. But one thing that came up which I thought was positive and constructive was that everyone seemed to say that this was a long-awaited bill, that something had to be done about it. The other thing that came out of it was that we heard it being said a lot of times that maybe this bill will tell people who are buying franchises to buy with their head instead of their heart. That came back quite often. I thought that was very important.

I believe that precise and clear disclosure regulations are most likely to provide potential investors with the information necessary to make sound business decisions about franchise investment. I also believe that we need to strike the appropriate balance between investor protection and over-regulation of franchise businesses.

Of course, with all those hearings, we heard that not only was it a long-awaited bill, but the current proposals of Bill 33—and this was said even by the American president who came in—lacked any real authority, lacked teeth. That's why the Liberal caucus is working together to bring in amendments in an attempt to fix the bill and address the main concerns expressed by those from whom we heard. We have to take into consideration and account the different recommendations given by those people. With a few changes, this legislation can reach the objective of protecting consumers against fraudulent and dishonest franchisors without affecting professional and honest businesses.

We will have amendments mostly on fair dealing. This is not explicit enough, so we want to bring in recommendations on fair dealing and also the right to associate and the contents of the disclosure statement. We have amendments to bring in there. We would bring in something on the damages for misrepresentation and failure to disclose. Another point we want to touch on is rights that cannot be waived, the release by a franchisee of a right given in this act as an obligation or requirement. We want to work this out.

Mostly those are the things that we are looking forward to bringing in while we go clause-by-clause with our recommendations.

Mr Crozier: I only attended the committee meetings one day, in London, and consequently what I might have to add to this may be limited. But, as well, I have been able to read the material that was available prior to that committee meeting, the one session that I attended, and subsequent material.

I think any of us who have been involved in our community or in the retail field, as I was, have heard anecdotally many of the stories that are presented as fact. With any legislation that we deal with in Ontario, we want it to be fair, but to me this is one of the cases where being fair is really moving to the side and protection of the franchisee. We all look for balance, but sometimes that balance has to be arrived at by perhaps moving a little bit more to the protection of one side than the other. Of course, what we have heard, through submissions to the committee as well as again in our own communities, is

that the scale always, or most of the time, seems to be in favour of the franchisor.

1040

In looking for fairness, we have to, in my view, look on the side of the franchisee, because oftentimes in going into these agreements there's a great deal of hype prior to it, almost evangelical in nature in some of the documentaries I've seen, and we have to guard against that.

In the material that was provided to us, the summary of recommendations by Susan Swift, one of the emerging themes as presented by her and that those in the committee heard was due diligence. We can take every step possible to be sure that a franchisee understands the contract. The unfortunate thing is that we cannot legislate, and forgive me for saying this, common sense; nor can we be absolutely sure that an individual understands.

An example that I could use is, in my former days in the insurance field you could sit down with an individual, go over an insurance contract from beginning to end, have a person sign on the dotted line and in a short time have that individual come back and say, "Well, I didn't understand that." So therein lies the difficulty. We can have lawyers involved, at great expense, unfortunately at great expense to those sometimes who can least afford it. We can try to guard against that, but I think we'll be forever trying to make some of these contracts totally understandable. So I hope we can do our very best to move toward that due diligence, where particularly franchisees are able to understand the contract they're entering into.

The other theme, of course, is dispute resolution. In my view, and from the data that has been presented to us, dispute resolution should be a very important part of this legislation. I truly hope the legislation will contain that kind of avenue for franchisors or particularly franchisees to pursue.

We often, in fact almost always, as members espouse that we want to act in a non-partisan way. Unfortunately, it's a partisan atmosphere that we work in, and I suspect many of us go home at night shaking our heads as to why we have to be that way. But that's the way it is, except in some cases where we really should act in a non-partisan way. I think this is one of them, the committee's attempt today to have these comments made and then discuss the bill after and arrive at a consensus. I commend the committee for trying to work toward that end, and I hope this is one of those cases where we all truly work together to provide meaningful legislation that will take into consideration the interests of everyone on all sides of the issue.

In conclusion, in addition to the other thanks that have been given to the staff on this committee, whom I didn't have the opportunity to meet with as much, I want to say to Mr Martin that I don't know of anyone who has worked any harder on any particular subject than he has. I want to congratulate him for his effort. I hope that in the end your work will have accomplished its goal.

Mr O'Toole: I would like to share my time perhaps with Ms Munro or Raminder Gill. I'd start by also saying that if there are questions, we may have time for dis-

cussions with Mr Hoffman from the ministry, as well as Ms Harden, who has been paying close attention to the public input. I feel that the general sentiment or theme here has been one of a very flexible, highly co-operative public process.

I also want to personally thank Mr Martin for going to a heck of a lot of work. I would say that one of the presenters, Mr Stewart, went to a lot of trouble. I thought he was a member of your personal staff, because he was supplying a lot of written documentation and material for the committee.

Respectfully, it does have a bit of history and a bit of legs to it. I think we are, in general, trying to find a balance. Are we going to find a perfect state? I don't think something like that exists on this earth, technically, but I believe we will try to come close to that. I know the government has indicated, through the minister and other communications, that we are very open to an amendment process, and there has been a lot of conversation. Until those amendments are actually tabled, I think we'll then move forward on some of the substantive things we heard during the hearings. Of course that's the way it should be, that we do respond to the public.

On the participation of the government, I think just respectfully—not to centre out anyone any more than Claudette; I know she attended all the hearings, as I did—but we also had Raminder Gill, who has been a small businessman. I don't think you were franchised.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): No.

Mr O'Toole: But you were a small businessman and familiar with the pressures. The reality of the stories we heard, Mr Martin, isn't unique to Sault Ste Marie, although they were told very well there. Mr Gilchrist, who also attended a good number of the hearings, is familiar with the franchise type of operation and, I believe, is quite sympathetic to some of the dilemmas of the franchisees. As Mr Crozier pointed out, you tend to swing to those who are the most vulnerable.

Personally, I would say, whether it's Mr Wishart, the Grange report or the long discussions on the relationship between a franchisor and a franchisee, there are clearly three major areas within the bill. The disclosure piece—I'm expecting to see us bringing some clarity to that. In the disclosure, I suspect it's more a regulated kind of process, without having too many lists of what you must disclose. I would certainly feel that having a framework for disclosure is something we need to do. Within that, you may want to have something to deal with issues of sourcing. They may differ according to certain franchise sectors. For instance, sourcing in a sector that deals exclusively with a product like a secret recipe, so to speak—you don't want somebody substituting stuff for the secret recipe, whatever it might be, in the industry being talked about.

The one I find where we have the greatest opportunity is with respect to fair dealing. The commercial reasonableness you have suggested, Mr Martin, is something I'm very sympathetic to, and have heard that repeatedly

in the committee. We'll see what kind of plain language comes out of the amendments we are all going to entertain. I think it is in the amendment process that we may have to come to some consensus ourselves: whether your amendment is worded better or whatever caucus brings forward the best, most tightly worded amendment.

The right to associate, as you've well pointed out, comes down to: Are they going to be recognized? It's fine to say they can associate. I want to make sure that in that association there is no intimidating factor, so that the franchisors just don't take it over and you either play their game or you're not a member, and that they at least recognize them as an association that reflects the common good of the greatest number in a democratic sense. We won't call it a union; we'll call it an association or a professional association. There might be some need to make sure that's clarified.

1050

I also like the suggestion Mr Martin has brought forward that in the framework of Ontario, being an important part of the Canadian economy—not to be political here—there is every reason to have some standing before the Competition Bureau, because if this is a problem in Ontario, certainly the Canadian regulators and government agencies should be looking at this. So I support that. There's quite a lot of foresight in that observation. Grocery stores, whether they are in Ottawa, Toronto or, for that matter, Halifax, may have the same problems and the same need to have some process to resolve their problems. Why would a franchise operated out of some head office not have similar patterns for disclosure and other processes that are standard across Canada? Maybe it's up to the committee to bring some attention to the Competition Bureau.

My intention is not to delay in any way. But if we felt we could get consensus, through discussion, on the 26th, I would like the flexibility, without forcing a vote on each section—I think there are 15 sections in the bill, and it would be in order to do that. We'll never get perfection. I feel we will get some significant improvements to this bill through this process, and I would like to report it before the end of this session. If we delay it and it doesn't get on the order paper—this is the first time we've gone beyond first reading. If we can expedite this process and have something completed in legislative form before the end of June, I think we would really have done something quite profound. We will then say there's a framework. I'm not averse to putting in a sunset provision to review this thing, saying that in three years or five years this would be reviewed or the regulations would be reviewed, or something.

With that, I will share my time with whomever else has something brilliant to share. Again, thanks to all the members and the staff for allowing this to be an educational process.

The Chair: Thank you, Mr O'Toole. I'd just indicate you can't put a qualifier on that they can only speak if they have something brilliant to say. We have about five minutes left.

Mr Gill: It was also a pleasure to travel through Ontario and meet some of the players in this thing. It was great, and I'd like to thank all the members who attended these hearings. It was my first experience where I felt the public had true input into the system. Of course, as everybody else said, my thanks go to Tony Martin as well, because he certainly worked very hard in educating not only us as committee members, but also having that venue where people could come for input. A lot of people shared their very emotional stories with us. In many cases it took a lot of courage, and I would certainly like to thank all those who appeared in this process.

As in anything, there are usually two sides to every story. In franchise systems, we heard from some players where they had difficulties with their contracts or felt they were dealt with perhaps heavy-handedly by the franchisor. At the same time, we knew from the experiences or from hearing from the businesses that the majority of those systems are working fine, except in some cases some of those franchisees got hurt. Many examples come to mind. I think there was a Pizza Pizza person who had difficulty. We all share, in a way, the difficulties he had. From a small business point of view, I know some of those difficulties, even though I didn't go through the franchise system itself. But at the same time, if you look at the papers today, there are still Pizza Pizza franchises being sold as a system, and many people, unless they are hiding something, are doing OK.

What I'm trying to say is that I don't think there is any perfect system anywhere. There are systems that are working fine, but some individuals—I think there were difficulties with Bulk Barn. Some of those are doing fine and some are not. Situations change. I personally have knowledge of a friend of mine who took over a doughnut franchise. I think I shared that briefly. When he looked at the numbers as he went into the system everything was fine, except he didn't realize that the courthouse next door, which had a lot of traffic coming in, was moving three months later. So there are things that happen that totally throw out all the disclosures you can have in the world which show the past history but not what might or might not happen.

There was an issue discussed about local sourcing. I think it came through very clearly in Sault Ste Marie, especially because some of those players are the local growers of the produce and local producers of eggs and stuff. So there is some provision where I think the franchisors can have some flexibility. We should not forget—and again, I'm going to speak a little bit from the franchisors' point of view—that the franchise system takes into account the purchasing that would go through the franchisors. The whole profitability is not only the initial investment that a franchisee makes but also this purchasing that they expect the franchisee will be making through the central purchasing system. When we say, "Can we regulate so that everything can be locally sourced?" I don't think we can do that.

As Mr O'Toole was saying, there's a compromise that we will have to come to. I don't think we can find a

Utopian ultimate solution. Going back, Mr Martin mentioned that we've been discussing this thing since the 1960s. I believe it's time to move on. I think we've had good public hearings and, as the parliamentary assistant said, we will perhaps put some kind of clause in, a sunset clause, whatever that is, John, where we will revisit it perhaps five years down the road. I don't think we can find an ideal solution, but at the same time, we must move on and come to some compromise.

The Chair: Could we have an opportunity now to move to a more general discussion, or if committee members have any questions of each other or of the parliamentary assistant.

I would just indicate that many people have given thanks. I want to add to the list and thank the government House leader, Mr Sterling, for both introducing the concept of a bill being referred out to committee after first reading and selecting our committee to have the first trial run at this. It provides an opportunity for greater latitude for the committee to discuss concepts and ideas, to hear from people and move toward a consensus. I see that the committee in this case has taken up that challenge and is moving in that direction and that's a very positive sign for legislating in the province. I think that's useful.

One of the things I just heard from people is that there appears to be a consensus about a number of areas of the legislation that the committee would like to see amendments to. We've yet to determine whether or not there is consensus about the actual content of those amendments. That might form part of your discussion at this point in time. I would also just offer the suggestion that it might form part of the discussion among committee members between now and when you actually table the amendments. One of the things we've heard expressed by a couple of members of the committee is a desire to move in an expeditious fashion through the clause-by-clause, when we get to that. That can be facilitated if there is consensus around the wording of amendments before they are actually tabled by the various caucuses. I leave that with you, as committee members, as a suggestion to pursue or not.

At this point in time, we'll open the floor for any general discussion or questions that people might have.

Mrs Boyer: I just wanted to mention that I forgot another point where we wanted to bring an amendment and that was on section 13, about regulations.

The Chair: Would you like to indicate at this time the direction or the intent of what you would like to do?

Mrs Boyer: No, I think I gave what we are working on right now as far as fair dealing and disclosure. We want to look at the regulations and come back with amendments. I just want to mention that we are bringing some changes to section 13, the regulations.

1100

Mr O'Toole: With your indulgence, I might ask Mr Hoffman if he wants to join us at the table, and Ms Harden, in case there are technical questions. It may help, if we could allocate some time here. I've heard the same input, I have the bill, and I think at a technical level it

may be helpful in constructing amendments if Mr Hoffman could be helpful in that respect.

Mr Crozier: I don't know whether anyone has any amendments on sunset clauses per se, but I would like to add my voice to that. This certainly is one of those pieces of legislation, and in fact there are many pieces of legislation, that probably should have a sunset clause so that they're reviewed after a period of time to see if they are working. That might be drafted by ministry people, or perhaps my friends around the table have some kind of introduction of that.

I also want to say that Mr Martin's comments about standing before the federal Competition Bureau would be one that I would individually support. It isn't something that I feel confident to speak about on behalf of my whole caucus, but it sounds like a reasonable recommendation to me.

Mr Martin: I just want to put some caution on the table here in terms of the sunset clause in that I'm hoping it isn't something that was put out there that takes the edge off something we should be doing now, because as you know, the books I've given you tell the stories of some 4,500 families in a period of about five to seven years that have been damaged big time. Five years is a long time if you're in difficulty or in trouble, waiting for some redress to that. I hope we would not see this sunset clause as an escape valve and not do the right thing at this particular point in time when we have an opportunity to do that. I would put that as a caution on the table that I would be worried about.

I've got some questions actually for Mr Hoffman.

Mr Crozier: Can I make one comment with regards to that one, Chair?

I agree with you, Tony, that you wouldn't want to take the edge off anything. The thing I see about a sunset clause is that if it isn't on the agenda of the government of the day, as you're all aware, it's very difficult to get it on the agenda. This is an important issue, I think we all feel, so I agree with the caution but I think the sunset clause helps to get it back on the agenda if there are kinks in it, that's all.

Mr Martin: It's consistent with another concern I have, to be honest with you, which is that we put something in place that kind of gives us all a sense of "OK, we're all right here," when in fact we haven't gone the distance or done the appropriate thing at the moment. You're absolutely right, Mr Crozier, when you say it's difficult—even when you're in government; I was there for five years—to get something on the agenda and actually have it come forward and see the light of day. It really is a monumental task and I have to tell you this whole exercise has been, for me, somewhat serendipitous in that here we are today, discussing this and actually having a chance to put it in place. Some pieces came together and we have a wonderful opportunity, I think, to do something meaningful and helpful in this instance.

So it's consistent with my concern that we not simply go with what is in Bill 33. It's my very sincere feeling that if we simply go with Bill 33—and I know that the

government is not suggesting that that's where we stay, that they are willing to move—that what we put up is this façade of, "There is regulation, therefore don't worry. Just go in and, if something goes wrong, you can always fall back on the fact that the government has a regime in place that will be helpful to you," when in fact under Bill 33 there really isn't. There's just a call for full disclosure before you sign the agreement and there's the right to associate. Now, they're good as long as they're done properly and appropriately and everybody lives up to the spirit of that. But if that's all we put up, then we perhaps do more damage in the long run than we do good. So by not doing the right thing here, or by hanging our hat on a sunset clause, we may in fact be doing more damage than we are good. I just want to say that's something that concerns me and that I want to put on the table.

The Chair: Mr Martin, before you go on with questions, Mr O'Toole wanted to comment on the sunset clause.

Mr O'Toole: We're at liberty to consult with really expert people here. We've just been pontificating on this thing, which is not very substantive. Let's say this: I would never like to leave the impression that franchising and small business is unsuccessful. My impression is that it is a very competitive, very margin-driven, successful business formula. That's the impression I would be leaving. There are anomalies. There are the Pizza Pizzas and others that have failures in front of them, but I hold in front of me examples like Tim Hortons, McDonald's, Harvey's and Wendy's that are successful formulas. In the context of today, five years in business is a lifetime; it's a product lifetime. In that context, we don't want to regulate or micromanage and the sunset is an appropriate tool in this particular sector, the small business, ever changing, Second Cup sector.

I would say to you that the government's theory, its philosophical genre, is non-interventionist. Our mandate is really less regulation and less red tape, no better demonstrated than in the ministry I'm with, consumer and commercial relations. We're trying to get into a self-regulatory framework. Those kinds of overarching phenomena may find some discomfort with you, because competition is the word and the market determines the outcomes of who sells more Coke or Pepsi or whatever. If we were to get in and say that thou shalt get certain kinds of—that is a non-starter in my view. I'm not speaking for the government, but we're non-interventionist. Start with that, Mr Martin, and you'll have a better comfort zone.

Mr Martin: If you want to go down that road—

Mr O'Toole: I'm not trying to—

Mr Martin: —we can take this cart and tip it over and get into that kind of adversarial back and forth on this. I would claim that you're dead wrong in some of the assumptions you're making here where this particular sector is concerned. We could have that argument. We could spend the rest of the time here this morning having that argument, and I could put on the table anecdotal evidence of the fact that there is no free market out there

and that there is no fairness where the big guy dealing with the little guy is concerned. We can do that. That's actually why we're here today, because there has been undue advantage taken by some people in the sector against others in the sector. You can have a freewheeling free market, if in fact there was one happening out there, but the reality is there isn't. Government needs to have the intestinal fortitude and backbone to stand up at some point and say, "We're going to put in a regulatory regime here that will at least create some fairness in the system." That's what we're trying to do here.

Mr O'Toole: I wasn't trying to be combative. I was really trying to be helpful in saying just what I've stated.

The Chair: Mr Martin, You had some questions you wanted to put to Mr Hoffman?

Mr Martin: Yes, I did. I was looking at this, and you've been on this train for quite some time and work very hard, I know.

Mr Joseph Hoffman: We'll have to compare dates at some point as to when we boarded the respective—

Mr Martin: Yes, in terms of this. Some of the things that I have concern about and that have been highlighted for me as we've gone through the hearings, and the three particular things that I'll be calling for: what were you imagining in terms of a way of making sure, for example, in the disclosure piece, that it happened and that what was in those disclosure statements was correct and consistent with other disclosure vehicles of this sort? How did you see the ministry overseeing or making sure that that in fact is what happens? I guess, to go even further—I might as well do it all—what did you see as a vehicle to make sure people don't misuse or abuse, because in Bill 33 there is no reference to penalties, and there is in Bill 35. I was just wondering if you thought anything more about that.

1110

Mr Hoffman: I'll try to cover all the elements you've raised, so if I've missed one, please don't hesitate. I want to emphasize that it's not what I envision. I can talk to the policy intentions behind the drafting of the bill and the issues the government considered in choosing to put forward the bill in its current form.

First of all, the concept of using legislation to set out a disclosure requirement without reliance on an inspection or audit regime is not an unusual feature. It exists in many jurisdictions, and it exists in many jurisdictions specifically in the area of franchise. It's also part of the statutory framework that exists in Ontario and other parts of Canada for things like cost of credit disclosure, which I think I made reference to at the beginning of the hearings.

In the way the bill is drafted, essentially the legislation provides a very clear obligation to provide the disclosure documents in plain language as a single document a minimum period of time prior to accepting any payment or allowing the franchisee to sign any agreement. The law will require that the franchisee receive that document in that time frame; the 14 days I think is set in regulation.

Ms Bonni Harden: Fourteen days is set out in the bill.

Mr Hoffman: Yes. There's also the obligation that within that period of time, if any material change occurs in relation to the disclosure requirements, the franchisor is obligated to disclose that to the franchisee. In effect, the bill also provides a right of rescission that can be exercised by the franchisee in one of two circumstances.

The first circumstance is where they've received the disclosure document, but there has been some material change subsequent to the provision of the document that has not been disclosed. In that circumstance, if you want to think of it as a clock, the 14-day period is extended automatically by 60 days so that there's a longer period of time in which the franchisee gets to exercise a rescission right.

The second circumstance is when, for whatever particular reason, there has been no disclosure whatsoever, so the franchisor has ignored the legislation absolutely and allowed the franchisee to sign a contract, accepted payment and has never provided a disclosure document at all. For a period of two years following the date of entering into an agreement, if the franchisee becomes aware of the legislation and that they were entitled to receive this document, as in the first circumstance, they have a right of rescission.

A franchisee does not need to go to a court to exercise that right of rescission. The legislation as drafted right now allows the franchisee to exercise that option. Once they exercise the rescission requirements in accordance with the statute, that triggers certain obligations on behalf of the franchisor in terms of the repayment of monies, etc.

If there is an onus that involves the courts, the onus is on the franchisor in that if there is a triggering of the rescission requirements and the franchisor believes they have disclosed or they did comply with the legislation, then the obligation, or the onus if you will, is on the franchisor to go to a court and demonstrate that in such a way that the court would determine that the rescission right is invalid.

So in our view it sets out quite clearly what the statutory obligations are. I can tell you that, as you alluded to at the beginning, as a policy director in the ministry, I've worked in this area for many years under successive ministers and successive governments and we've looked very carefully at the experience in other jurisdictions along the way. One of the things we looked at was, is there any demonstrable evidence that a filing requirement is one that adds value to the type of disclosure obligations that I've said?

Our conclusion in looking at that was that in many jurisdictions where there are filing requirements, they don't really add to the value. In some respects they create some risks in that there is a risk of a false reliance somehow that the document is filed, wherever it happens to be, with a department of government or with an agency or a securities commission. The presence of a filing requirement is taken by some franchisees as a sort of comfort that, somewhere, someone else has done the due diligence. This is an important point to think about in that context.

There are many jurisdictions that have also had filing requirements and have repealed them, for a variety of reasons, including the one I have just mentioned.

I'm not sure if I've covered all of your points.

Mr Martin: Yes, you have, although at another time, as we debate amendments, I can bring up some more.

Mr Hoffman: If I could just add one point, Bonni has whispered in my ear to remind you there is also the right of action for misrepresentation that is set out in the statute. That's an area which I know our minister is certainly open to seeing some consideration of, whether there can be improvements, for example, in regard to the duty of fair dealing and the rights of actions in that area.

The Chair: I have Mr O'Toole and then Mr Crozier and then back to Mr Martin.

Mr O'Toole: I think this is sort of helpful. I perhaps should stay out of this loop because we have some broader opportunities.

Under section 2, the application section talks about extension and renewal of contracts. One of the things we heard, which was quite sensitive, was somebody coming up to the renewal date in their existing agreement, and some of them felt, with leasehold and other commitments, there maybe wasn't due process there for extension. Would that be treated in the disclosure portion or is that treated specifically—like, some security that I'm going to stay in business. That gives you some idea what I am asking.

Mr Hoffman: Yes. Basically, the way the act is drafted, the disclosure requirements—and these requirements will be set out in regulation—would require that the franchisor disclose how they deal with terminations. It wouldn't compel them to deal with terminations in a specific way, but it would compel them to explain what happens upon termination and what rights the franchisor, for example, exercises.

The way the bill is drafted right now, as those regs are prepared, the government does have flexibility to create certain obligations for the phrasing of that section of a disclosure document. For example, a cautionary note of some form that's attached to that section of the agreement might be something that any government of the day would want to look at.

But as a disclosure bill, the approach taken would be to require clear disclosure of how the franchisor deals with termination and what rights or obligations the contract sets out between the two parties in terms of what happens upon termination.

Mr Crozier: Just a question, because I'm a layperson when it comes to this kind of thing, and some reassurance. You said that in the case of no disclosure, the franchisee would not have to go to court. I've always felt that even though that's the case, it's the right of anybody to go to court. I mean, to say, "No, thank you"—I think that's either wrong under the Charter of Rights or it's wrong under some sort of legislation. I have a right to go to court. Is that solid, or can the franchisor say: "No, thank you. I disclosed it to you and we're going to fight this out in court."

1120

Mr Hoffman: I'm sorry, I'm not sure if I understood.

Mr Crozier: You made the statement that, in the case of nondisclosure, the franchisee would not have to go to court.

Mr Hoffman: No. In the case that the franchisee chose to exercise their rescission right under the legislation, arguing that because there was absolute nondisclosure, they never received the disclosure document, the onus would be on the franchisor to either fulfill their obligations under the legislation and pay back etc, or say: "Well, I'm sorry, you did receive the disclosure documents. I have the evidence right here. You signed on a certain day. If we have to, we'll take it to a court and ask the court to overrule your rescission right."

Mr Crozier: But to say they don't have to go to court—they may have to go to court.

Mr Hoffman: Let's contrast this with the way it is now. Right now there are no rescission rights because there's no obligation to disclose. Even if there is a disclosure document provided, which in some franchise systems there are—there are systems that use the uniform franchise circular disclosure that's set out in the US Federal Trade Commission because it's convenient to use that in many jurisdictions in which they operate. Even though that disclosure document may be provided to a franchisee, there are no entitlements. If there is nondisclosure of a material change or a material fact, there's no obligation under law for rights to a rescission etc. So right now the franchisee would have to go to court in order to prove basically the broad duty of fair dealing or that their rights have been abrogated in some other fashion. That's been partly the arguments raised in many of the court situations that have been covered in the media for years.

Mr Crozier: I don't want to spend a lot of time on it, but in all probability then, as long as the franchisor went along with these steps and didn't dispute that there had been disclosure, you don't go to court. But if the franchisor disputes it, you're going to end up in court.

Mr Hoffman: Yes, absolutely.

Mr Martin: Just by way of a quick comment, we regulate the stock market and we have the securities commission at which statements are tabled so that we can in some way give people a sense of confidence that when they put their money in, it's protected, so there isn't insider trading or whatever happening. We have an industry in Ontario of some \$45 billion in retail activity and investment of \$4 billion. It seems to me there's the need of some vehicle where some of these statements could be put so they could be vetted and make sure they're somewhat consistent and streamlined.

My second question is about a dispute resolution mechanism. I don't know about you, but it was obvious to me as we went through the hearings, from the people who brought me to where I am today in terms of this issue, that what they were looking for more than anything was some vehicle that they could bring their grievance to, to have it looked at by some objective third party so that

they wouldn't have to go through the very expensive and difficult exercise of going to court.

Is that not something that you've thought about or considered or would be willing to now do some work around? And in coming to Bill 33, what was the history? What did you look at in terms of not including that?

Mr Hoffman: First of all, I think it's safe to say that the experience in the ministry very much mirrored the experience of the committee in terms of hearing from many sources, not unanimously but a substantial number of sources, that some mechanism other than the courts is either needed or useful to resolve disputes.

Our experience maybe went one step beyond what emerged in the committee process. In the consultations and the work with franchisees and franchisors over the past four or five years, it became very obvious to the ministry that there was absolutely no consensus on what the alternative mechanism should be, if any. There were franchisees who argued that mandatory mediation should be absolutely compelled in the statute even though from a design point of view it is kind of problematic to mandate mediation, which tends to be a mechanism that's proven successful only where both parties have an interest in that. There were other franchisees who argued that mandatory arbitration should be set in place. There was another constituency of franchisees—and I'm not talking about the franchisor perspective—who argued that alternative dispute mechanisms like arbitration should be banned under the legislation because they were as costly as the courts and having a particular prescribed method in the bill could preclude a variety of different choices.

I'm not trying to suggest to you that the ministry reached some conclusion as to which of a variety of mechanisms makes the most sense. That's not the case. But I think I can say to you that in the policy work leading up to the bill in its current form, there was very strongly the view that absolutely one fundamental thing that should be part of the legislation is clarity about whether or not the franchise system that's being offered utilizes a dispute resolution mechanism, that the disclosure requirements can set that out clearly and the presence of that section in a disclosure document would send an important signal to the franchisee or the prospective investor, either by noting that the franchisor doesn't have a system or doesn't subscribe to any kind of system or is not prepared to be involved in any kind of alternative dispute resolution, or to outline the nature of the system and how it might operate so that the potential investor can make an informed decision.

I certainly would not want to debate with you the merits of different mechanisms. Clearly, if political consensus emerged that the bill should take a different approach in this area, that's highly appropriate. I'll leave that to that process.

The Chair: Mr Martin, Mr O'Toole has a question on this point. Did you want to move on to something else?

Mr Martin: No, the same point.

The Chair: Continue then.

Mr Martin: It seems obvious to me then from what you said that there is some real concern that there be

something. They can't agree, but there has to be something. This is a huge point of contention and concern. It seems that the government's position at this point is to include it in the disclosure piece but not to actually go ahead and take the bull by the horns and put in place a vehicle that would be helpful.

In terms of the group that you had this discussion with—and from what I can gather, looking at the makeup of the working team, most of the players were either franchisors or lawyers who represent franchisors or who belong to the Canadian Franchise Association. The president of that organization, when he appeared before us, said that there were no franchisees as members of the Canadian Franchise Association.

In talking to a lot of the franchisees out there who are experiencing difficulties at this point in time, their fear, even up to a discussion I had yesterday with some folks who have some real concern about this, is that they're not willing to come out publicly and vehemently put their case about some of these things they feel are necessary, because they're afraid of the retribution that may happen.

I would like some clarification from you as to the makeup of the group that actually came to the compromise position we have in front of us here re the question of a dispute resolution mechanism.

1130

Mr Hoffman: Sure. First of all, I can clarify a number of things for you. The ministry, over the years, has used different mechanisms to consult on this issue, in addition to having a standing team, so to speak, that we have used as a discussion forum, for example, during the consultation or in earlier attempts to see where there might be some elements of consensus between franchisors and franchisees or experts on a legal side who work from a franchisee perspective or work from a franchisor perspective. It's not the only mechanism the ministry has used, and I want to clarify that at the beginning.

Your referred to the Franchise Sector Working Team. Basically there are nine members of that group. Four of those are people who are currently franchisees. There used to be five, but one individual left the group for personal reasons; retirement, I believe. A number of them appeared before the committee on different days of the hearings. One of them is a lawyer, who has represented franchisees and chaired a franchisee action group in a number of legal disputes over the years and is knowledgeable on franchise issues from a legal perspective from the point of view of franchisees. Five members of the Franchise Sector Working Team are franchisors. They are either senior staff from an individual franchise system—Tim Hortons, for example—or they are executives, like the president of the Canadian Franchise Association, who represents a franchisor perspective, as you know.

This is the current composition. As I said, the composition has changed a little as people left, but by and large the ministry has been satisfied that this has been a very balanced discussion. When we conducted the consultation leading up to the bill—you'll recall the

consultation paper that was released by the ministry—we met with a wide number of groups, predominantly franchisees, people who were not part of the team. Basically, as I said at the outset, the Franchise Sector Working Team is not the only consultative mechanism involving franchisees that the ministry has had.

The Chair: Thank you. I'm going to go to Mr O'Toole, and I'd like to suggest that over the next 10 minutes or so we try to wrap up this phase of the discussion, if we can. We still have an outstanding item from the subcommittee report to deal with.

Mr O'Toole: This has been helpful in a technical sense, I believe. I just want to go through in some systematic way and briefly summarize. Section 4 is the section dealing with the right to associate. What I'm trying to establish here is that if I were to go through those sections and strengthen them under the whole umbrella of the right to associate, and then look at the sections dealing with the right of action, basically sections 5 through 12—section 12 deals with some exemptions—if you look in detail at those sections, starting with disclosure and the 14-day-penalty situation, each of those sections establishes legitimacy for action and right of action.

I'm not trying to be a legal beagle here because I'm not, but it reads fairly straightforwardly. What I could say and would like to ask you, Mr Hoffman, from a policy perspective is, once this right to associate is established and we have whatever the franchise group is called and they engage the services of a litigant and that litigant, in collective action, or what I would call a class action of sorts—there are two parts to this: the right of association and the right to form a collective class action against a franchisor. Is that outcome a possibility as this bill is currently written? I have a part 2 to that as well.

Mr Hoffman: It's important to clarify. Actually, I'm glad you raised the right to associate, because I think it is important to understand the intention behind the drafting of that section. One problem that became apparent over the years of looking at this sector was that, as fantastic as it is to believe this actually goes on, there are franchise agreements that contractually prohibit a franchisee from talking to another franchisee in the same system or anywhere else.

Our current minister, as well as his predecessors, felt very strongly that this is a fundamental issue. No contractual system should basically assign away someone's entitlement to have an association with other individuals. The intent of this section was basically to eliminate that practice, as limited as it is—and our evidence is that it's not widespread by any means. The intention is to say that if there is a contract that prohibits a franchisee from associating with another franchisee or another business, that essentially is nullified under this agreement. It's one of the few aspects of the bill that is retroactive.

Mr O'Toole: OK, I accept that. I'm just really trying to get to a fairly simple—

Mr Hoffman: But I want to clarify what it wasn't intended to do. It wasn't intended to create an obligation

to deal collectively. In the circumstance you described, franchisees can associate, or will be unconstrained, able to associate. If they are doing so for the purposes of comparing information for legal action or choosing to have someone represent the interests of a number of franchisees in a legal action, that can be done and can't be contractually prohibited any longer.

Mr O'Toole: Good. I think that establishes in some fair and reasonable way the right to be recognized, either as an individual or as a collective behind a single lawyer. I think that could be established. The failure to respond to an application of the law here would sort of be contempt of court, because there are provisions here for the right of action. And if these are common things—I'm sure this association is one of the most troubling for the franchisors. It redistributes the balance.

I'm always saying to Mr Martin that in my strengthening of this thing, that's the section that has some pretty—the final part of this, to wrap up quickly, is: This not becoming a piece of legislation that is interfering and, I would say, interventionist, is important. We don't want it to become a relationship piece of legislation. I would say, though, that in the ADR process, if we look at the courts today in civil matters, some attempt to have alternative dispute processes is the future. No one can afford the lawyers technically. Part 2 of this is that the associations would improve the language of disclosure specific to their sector over time. That's what I'm trying to say here. What I have said is: Associate the rights to recognize and follow through resolving disputes.

Healthy organizations are in a continual refinement of the relationship. I saw that in McDonalds. I heard that in McDonalds which, by the way, is one of the more successful franchises. I'm not complimenting. I'm saying that the fellow who was on the franchise working team, a gentleman I could speak to with some comfort—20 years in three or four or five McDonalds and just singing that company song. He's been successful. He says they deal with their individual and collective expectations at corporate meetings. He's on some advisory board. I think that's healthy and I think that exists today.

1140

Those alternate dispute mechanisms don't have to end up in the courts at all times. It isn't a conflict deal; it's change. The corporation wants to survive. All of them want their products to be the best cars, the best banks, the best pizzas, the best chicken, and to do that they've got to change. As an individual, one says: "Oh gee, this continual corporate pressure to change. I'm so sick of it." You either change or you perish, unfortunately.

I understand the dynamics. There is a process there and part of that process of course is educating the independent businessman. What I've described here, the ADR, is a model for this to survive. Do you think it's strong enough?

The Chair: Mr Hoffman, I'm going to ask you to keep your answer as brief as possible.

Mr Hoffman: I think the best thing I can do is just to clarify that the right to associate as drafted in the statute

isn't an obligation. It doesn't create an obligation on a franchisor to bargain with an association. It eliminates any contractual ability of a franchisor to prevent association between franchisees and establishes a right of action for damages if that right is interfered with directly or indirectly in any way.

The Chair: Just so I understand that exchange, I think one of the things Mr O'Toole referred to was the right to be recognized, which in fact is not contained within the provision as it is currently written. OK.

Mr Martin, you had one more question?

Mr Martin: Yes, very briefly. On the issue of sourcing, have you done any research?

Mr Hoffman: We've done quite a lot here, but in the interests of time, I've had some fairly recent discussions with our minister around this, debriefing him on the parliamentary committee hearings. One of the issues the ministry is concerned about and the minister is very interested in is this problem of supply relationships and franchise systems being perceived as a restraint on trade. If this is a systemic problem that is coming out of the fact that franchising as a way of organizing businesses has mushroomed so much, then it probably is appropriate to make representations of some kind to the Competition Bureau. Our minister has asked us to do whatever we can to prepare. I think he's quite open to having discussions with other caucus members around how such a representation might be a multiparty one.

Mr Martin: In the meantime, though, is there any talk about putting something in this act that would untie the hands of some franchisees? For example, the Bulk Barn issue right now: "Bulk Barn, bulk buying." They were told when entered into it that they would get product cheaper than they could get it themselves. When they looked into it, they found out that wasn't true. If they just went down the road, they could get product at a much cheaper rate than they were getting from the franchisor and they were being misled.

Mr Hoffman: I can't comment on a specific circumstance, but I would think in a case where a franchisor has made representations in a disclosure document asserting the cost advantage of the supply relationship and that franchisees would be able to source supplies contractually at a lower rate than available on the market and that didn't happen, that would clearly be an area where there has been some kind of material change or an issue of fair dealing.

In a general sense, the supply issue is one which, if the government was to contemplate an amendment in this area, it would be a departure from the approach of focusing on disclosure, although it is possible to strengthen the disclosure requirements in the way the bill is drafted now to provide very strong cautions to the franchisee around what the implications could be for them arising from any contractual obligations to purchase supplies solely from the franchisor.

Ms Harden: In those circumstances, if I can just add, the franchisee, if there were a misrepresentation, has a clear right under section 7 of the bill for an action for

damages if the franchisee suffers a loss, a right of action for damages against the franchisor for the misrepresentation. That same section provides a right of action if the franchisor does not comply with the disclosure requirements.

The Chair: Are there any further questions for ministry staff at this point in time? Mr Hoffman and Ms Harden, thank you very much. We really appreciate your attendance here today.

Mr O'Toole will be returning momentarily. We need his presence in order to deal with the subcommittee report. That's our next item to deal with before 12 o'clock.

We are just temporarily pausing, awaiting a couple of members' return to the room. I'm not prepared to wait long. I guess I won't have to. About two more minutes and then we will begin, irrespective of who's back in the room or not. Thank you.

SUBCOMMITTEE REPORT

The Chair: If we can continue with the business at hand, clause 3 of the report of the subcommittee was deferred to today, April 19, to be dealt with. Clause 3 reads, "That the committee meet on Wednesday, April 26, 2000, for clause-by-clause review of Bill 33." At this point in time, I would like to ask a member of the subcommittee to put that motion on the floor so it is duly moved and then we can deal with it as the entire committee sees fit.

Mr Martin: So moved.

The Chair: OK, Mr Martin, it's moved. It is before us now. Is there any debate or discussion with respect to that clause?

Mr O'Toole: Just trying to loosen this off a little bit, as has been demonstrated this morning, we can talk about this ad infinitum—and I'm not trying to be smart here. I'm trying to say that I look at an end date; how do I get there, recognizing that everyone should still be in the boat? Do you understand? If we don't put some expectations on the committee, we'll talk about the first amendment for five hours. I think we could achieve this by setting some framework around it. I'd be very pleased to extend another day, start a day earlier—do you understand?—without meaning to be in contravention of the clerk of the committee. Otherwise, we'll be here for four months talking about it. That's what happened with the last two governments: They couldn't get consensus, so it died. That's what's happened. Anyway, can we have some response to that? I'm not trying to hold you up to ransom either.

1150

Mr Martin: Mr O'Toole, it's called the parliamentary process. It's a vehicle that we've put in place over a long number of years to make sure that people have their say and that issues get dealt with in a fulsome fashion. Some things take longer than others. That's the way it is around here. We, in opposition, have a limited number of vehicles to use to get our point across. Bill will remem-

ber, because he was in opposition when we were government. To tie the hands of the opposition by saying you're only going to have a day, when that's not in keeping with the spirit of this place in my view, is unparliamentary.

I would hope two things: that the government would be respectful enough of the right of the opposition to make their case and bring their amendments forward and use whatever vehicles are at their disposal to put pressure on the government to consider seriously and in a whole-some way the points which they are trying to make, but I also recognize that the Chair has a role to play. The Chair, in her role, will make sure that we don't become completely and totally repetitive and that we stay on topic and that when we run out of things to say, it's obvious and she'll put the question.

I want to exert my respect for both the parliamentary process in this instance and the role of the Chair to make sure that we do the right thing, that we stay within the parameters of the committee and that we allow whatever time is necessary to make sure that we all get to say our piece and put our points. I get the feeling on one hand that the government is willing to look at and listen to and work with us on this side of House on finding some ways to resolve some of these issues, and then every now and again I hear you, Mr O'Toole, go off on a tangent that indicates to me that we're completely and totally on different sides of the issue here. I don't know where we're going to end up at the end of the day, to be honest with you, given that sort of inconsistency in presentation and approach and understanding of where this issue is concerned.

I am very concerned that there are a number of small business people, very well meaning, hard-working, determined, who have made significant investments, who are concerned about their future, wanting us to do the right thing. For us to limit ourselves simply because, I don't know, we want to get this done next week as opposed to the week after, I have a difficult time with that. I think we need to take the time that's necessary to do this right, to find the proper balance. At the end of the day, yes, I too want to see the light of day and become the order of the day as far as the legislation is concerned. Out of respect for and trying to honour the stories of those who came forward, I don't want to carry this on any longer than anybody else does, but I certainly want to have my opportunity to make my case and to play this out as this place presents opportunity to have a playoff. We're only at first reading here. After we do this, we have to go to House, second reading. Then there's the possibility of more committee work after that. Even if we determined that we were going to finish this next week, it isn't finished until it's finished.

In keeping with that, I do have with me today the amendments that we're going to table. I'm not proposing to table them today, although I could if that would be helpful to people. I heard the parliamentary assistant say that he was interested in knowing what it is that we're

bringing forward. Well, I would suggest to all of you that if you want to know what I'm bringing forward, look at Bill 35. I'm basically making amendments that reflect a call for us to move to where I wanted it to be had we adopted Bill 35. There are a couple of other things that I have in the report that I circulated—

The Chair: Mr Martin, to keep you on topic, we're actually talking about the recommendations for dealing with clause by clause right now. You're close, but we're running out of time.

Mr Martin: OK. I'm just saying that if, in the interests of time and getting this done, people would like to have my amendments today, I'm willing to share them, but given that everybody else is holding off until next Tuesday, maybe that's what I should be doing too. I'm more than happy to sit down off the record, away from this table, with other people to try to hammer out some consensus on this so that we can get it done perhaps next week. But if that's not possible and I find that I'm not able to achieve at least the underlying principle of what I've outlined here, then it may take longer, and I'm not sure how long that will be.

The Chair: Briefly if possible, Mrs Boyer.

Mrs Boyer: I just want to say that I go along with us beginning next Wednesday. I mean, we've decided by unanimous consent that we would go clause-by-clause. You're the Chair. I'm not ready to say that we have to finish on Wednesday, but I would be ready to start earlier, as we had said, and move on in other hours, not just from 10 to 12. That would be great.

Let's wait for what we have as recommendations from clause-by-clause. I think that today we did have a chance to ask the questions and we may have consensus from what we heard today.

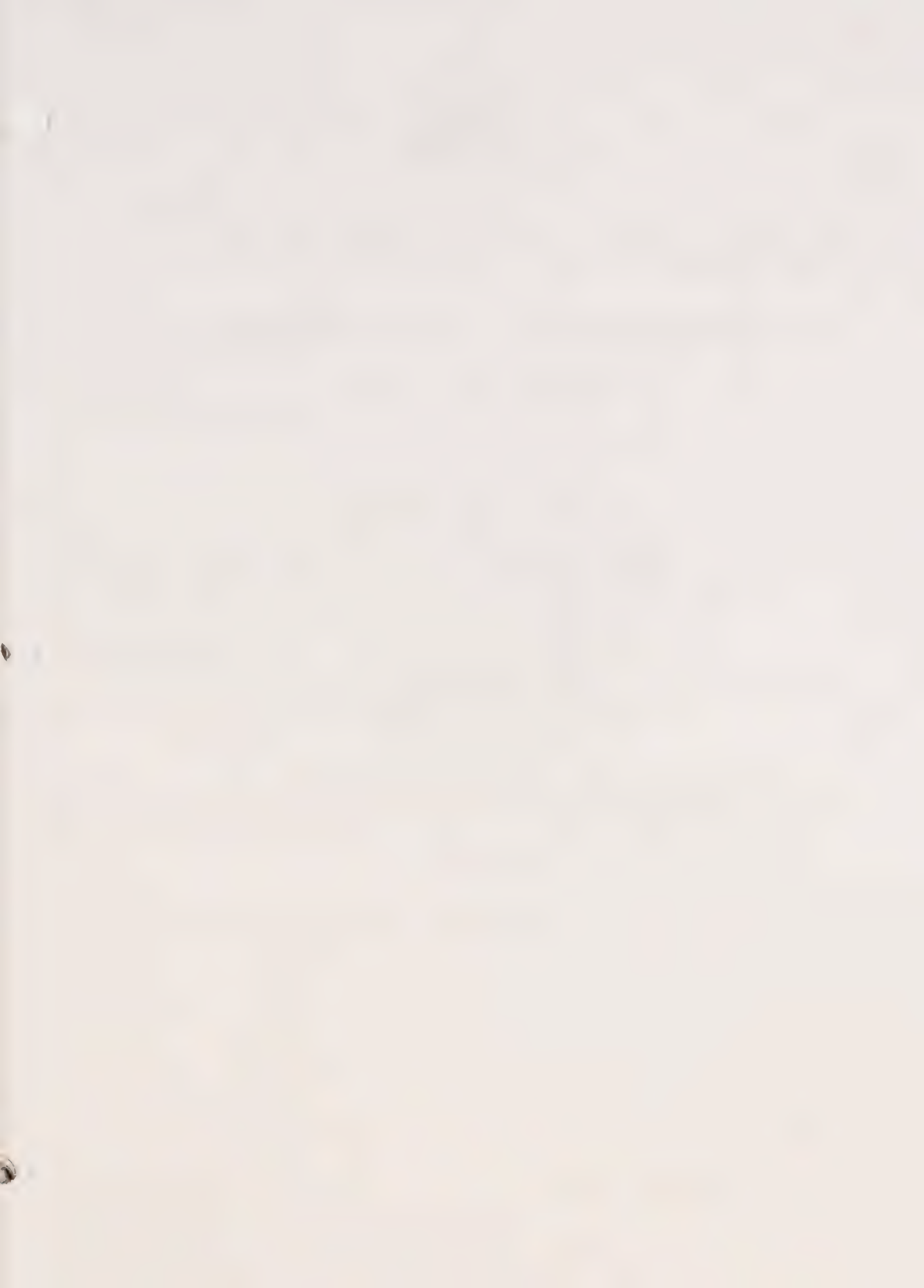
The Chair: If it's of any assistance to the committee members, I'm going to try one more time to give you fair warning that no attempt to limit the time for this, with respect to limitations placed in this motion, will be accepted by this Chair. You can express intent and goodwill all you want, but we will not, as a committee, overrule the rules of order or the directions, or lack thereof, at this point in time from the House. So I appreciate and am hearing a general intent to move as quickly as possible. I'm attempting to circumvent a long debate on this by indicating that any amendment which places a time limit on the clause-by-clause will not be accepted as in order by myself as Chair.

Is there any further discussion or debate on this? OK. We have before us the recommendation from the sub-committee that the committee meet on Wednesday April 26, 2000, for clause-by-clause review of Bill 33.

All those in favour, please indicate. Those opposed?
Carried unanimously.

Thank you very much. At this point in time we'll adjourn. See you next week.

The committee adjourned at 1155.



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Ms Anne Stokes

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First Session, 37th Parliament

Assemblée législative de l'Ontario

Première session, 37^e législature

Official Report of Debates (Hansard)

Wednesday 26 April 2000

Journal des débats (Hansard)

Mercredi 26 avril 2000

**Standing committee on
regulations and private bills**

Franchise Disclosure Act, 1999

**Comité permanent des
règlements et des projets
de loi privés**

Loi de 1999 sur la divulgation
relative aux franchises

Chair: Frances Lankin
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 26 April 2000

Mercredi 26 avril 2000

*The committee met at 1004 in committee room 1.*FRANCHISE DISCLOSURE ACT, 1999
LOI DE 1999 SUR LA DIVULGATION
RELATIVE AUX FRANCHISES

Consideration of Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors / Projet de loi 33, Loi obligeant les parties aux contrats de franchisage à agir équitablement, garantissant le droit d'association aux franchisés et imposant des obligations en matière de divulgation aux franchiseurs.

The Chair (Ms Frances Lankin): I call the meeting to order. We are here today under order of reference from the House of Tuesday, December 23. Today's business is to begin clause-by-clause of Bill 33, An Act to require

fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors. Mr Martin?

Mr Tony Martin (Sault Ste Marie): Mr Dunlop looks a little lonesome over there. I think maybe we should just move ahead.

Mr Garfield Dunlop (Simcoe North): That's what I was worried about.

Laughter.

Mr Martin: I move to defer the discussion of clause-by-clause on Bill 33 to May 3, 2000, next Wednesday.

The Chair: OK, there's a motion before us. Is there any debate of this motion? Seeing none, all those in favour please indicate. Opposed? Carried.

We'll adjourn and resume next Wednesday, May 3, for clause-by-clause of Bill 33.

The committee adjourned at 1005.

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STANDING COMMITTEE ON
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Wednesday 10 May 2000

Mercredi 10 mai 2000

*The committee met at 1011 in committee room 1.*FRANCHISE DISCLOSURE ACT, 1999
LOI DE 1999 SUR LA DIVULGATION
RELATIVE AUX FRANCHISES

Consideration of Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors / Projet de loi 33, Loi obligeant les parties aux contrats de franchisage à agir équitablement, garantissant le droit d'association aux franchisés et imposant des obligations en matière de divulgation aux franchiseurs.

The Chair (Ms Frances Lankin): I call the meeting to order, please. We are here to deal with Bill 33, An Act to require fair dealing between parties to franchise agreements, to ensure that franchisees have the right to associate and to impose disclosure obligations on franchisors. Today we are gathered for clause-by-clause consideration.

Mr Tony Martin (Sault Ste Marie): I move a 10-minute recess.

The Chair: There has been a motion for a 10-minute recess. All those in favour, please indicate. Opposed? Agreed. Thank you. We will recess for 10 minutes.

The committee recessed from 1012 to 1023.

The Chair: I call the meeting to order. Again, we are convened to deal with clause-by-clause consideration of Bill 33.

Mr John O'Toole (Durham): Chair, if I may, I would like to move that we go in camera for about three or four minutes so Mr Martin can explain how we got to this point in the consideration of clause-by-clause for the edification of all the members of the committee, so we know we are starting from, and we can go through it I think a little more expeditiously. I would default to Mr Martin if he has a comment on that.

The Chair: There is a motion by Mr O'Toole to take the committee in camera. Is there any debate of that motion? Seeing none, all those in favour, please indicate. Thank you. Passed unanimously.

We will now go in camera.

The committee continued in closed session from 1024 to 1035.

The Chair: The committee is back in session. If I may, I'm seeking agreement from the committee

members that we commence with a process of up to 10 minutes from each caucus for statements.

Mr O'Toole: Madam Chair, if I may, just for the members of the committee, I'd like to introduce the members of staff who are with us to help answer any difficult technical questions. On my immediate left are Joseph Hoffman, who is the director of policy, I believe, and Bonni Harden. Backing up the whole team is Terry Irwin. They're here as a resource. With that, thank you.

The Chair: Did we get everybody on record?

Mr O'Toole: Pardon me: and Allan Williams. I apologize, Allan. I looked before and I thought you'd left.

The Chair: I didn't want you to feel left out, that's all.

Mr O'Toole: Allan was hiding at the end.

The Chair: Welcome, and our thanks again to the ministry staff.

There is agreement from members of the committee that we will commence today's session with statements of up to 10 minutes in length from each of the three caucuses. Mr Martin, would you like to begin?

Mr Martin: Yes. In the spirit of the co-operative nature of this venture, I want to thank everybody for their efforts to date, particularly Allan Williams for being so helpful.

Having said that, I have to put on the record today my disappointment that we haven't been able to achieve more than will be obvious as this session unfolds.

We travelled the province for the four days, and I want to recognize that was by the co-operative support by all three caucuses in this place, particularly the government. They could have chosen not to do that. They could have chosen to have a day of hearing in Toronto and then get on with business. They could have chosen not to travel, but they chose to travel, and I recognize that. It's because of some moves of that sort that I am willing today, as will become obvious, to agree to some changes to Bill 33. That gives me some relief in terms of my concern and in terms of trying to respond to some of the things we heard as we travelled the province.

I think it was important that we got out to the various places that we did—Sault Ste Marie, Ottawa, London—so that we might hear from folks. I've said before that it took some degree of courage on the part of some of the people to come forward and share their stories and tell us some of the things they did, because it put them in some jeopardy. We will never understand how much jeopardy

it put them in. We will never understand what the feedback has been to them because of the action they took in order to participate in the democratic process, in helping us as government to try to put together a regulatory regime that will govern that sector of industry that is becoming ever more important as the amount of business done in this way increases.

It was really important that we do that and, in doing so, that we educate people around the issue of franchising and some of the difficulties and challenges that are there. Franchising often presents as an easy turnkey. You just come in, follow the formula, make your investment, do the work and make money, when in fact it's not as simple as that. It's as sophisticated as any business operation out there, as difficult and challenging as any business set-up. In some instances, if you are to believe some of the research that has been done, and there's no reason in my mind why we wouldn't, franchising can present as even more difficult in some instances than getting into a traditional regular or small business start-up and operation.

1040

It was really important that we get out there and share with the province the concerns that were raised. Brought to the committee during those hearings were not only the stories of the people who came forward, but a raft of research that was done by the Canadian Alliance of Franchise Operators and one Les Stewart to compile two huge volumes of information that he gleaned from the media, stories that have been written over a period of five to 10 years about franchisees who got into some difficulty with their franchisors, sometimes relating how it turned out and sometimes simply relating the circumstances surrounding those stories. It reflected the very difficult stories of a significant number of families in this province who have been very negatively affected by getting into franchising arrangements to protect their future and investment or to do something with a severance package they may have received.

This brings me to the next point I want to make. Not only is franchising evolving and growing in the province, but as life changes more and more in Ontario, à la the way we do business, more and more people, particularly middle-aged to older workers, are finding themselves out of work as restructuring happens. I use as an example the closing down of the brewing plant in Barrie. Some folks there, because they negotiated it and actually had a work stoppage at one point, will be given a fairly good severance package, and they will be looking around to invest in something. I think we as legislators want to make sure that whatever they invest in—if they do the work and are willing to follow through on the commitment they make by way of the agreement they sign—they have every chance of being successful and being able to contribute to the economy of this province as it unfolds.

In my view, we are at an important juncture today. Finally we have a bill before us that is going to be passed. Legislation was recommended 30 years ago in

the Grange report under the able leadership of Arthur Wishart, who was my predecessor as MPP for Sault Ste Marie. Subsequent governments have looked at this. The government I was part of from 1990 to 1995 established a working team, the report of that working team was ultimately delivered to the present government, and here we are today considering the result of all that work.

Bill 33 was identified by a number of presenters during the hearings as not going far enough, as not having teeth to it. As a matter of fact, it was referred to by some people, including myself, as perhaps worse than not having legislation at all if it was simply left as it stood. So I am happy to report today that some amendments have been proposed by the government that I think will put some baby teeth into the act, which hopefully will grow in time. As we around this place consider the evolution of things once this bill is put in place and people begin to work with it, hopefully we will nurture and nourish the growth of those teeth so that people will be protected and encouraged and have every chance of being successful in the franchising they decide to do.

Having said that, it really doesn't go nearly far enough as far as I'm concerned. The government was obviously not willing to move from simply a disclosure and right-to-associate piece of legislation. That became obvious to me through the hearings and in the discussions I had with government over the last couple of weeks as we moved toward trying to come to some co-operative, all-party agreement on what we would move into the House with in terms of amendments and ultimately a package we would present for approval or non-approval.

I pointed to three areas, out of myriad areas we could have looked at, that I needed some reference to in the bill if I was going to be agreeable to moving expeditiously on this so that we might get it through the House before the end of June. They were in the area of a vehicle government would set up or facilitate, perhaps using the securities commission to accept disclosure statements so they could be vetted and prospective franchisees could feel confident that somebody other than themselves was looking at these things and making sure that everything in them and the people who are delivering them and who stand behind them and who ultimately will be in partnership with them are bona fide and above-board and, if they're not, that those things are pointed out to them, not unlike what happens now in terms of offerings on the stock market.

If you remember, for a long time that was a sort of freewheeling, casino type of operation where you went in with your money and could win or lose depending on a lot of things you had no control over. Franchising in this province, without any regulation or legislation, is a lot like that right now. As a matter of fact, franchising in Ontario is referred to by a lot of our US neighbours as the Wild West.

There were a number of things I thought were important, if we weren't going to move to regulating the relationship, that in some way needed to be in, and that

was one of them. The other two were some significant movement in the area of the need for dispute resolution, so that people don't have to go further into debt or into bankruptcy to prove their case in court, and also some movement in the area of the issue of sourcing goods and services, to give franchisees the right to source where it's not a trademark issue and, in doing that, to assist local economies and local producers to get their goods into the market.

The agreement we've come up with is that at least two of those three things will be referenced in regulation under the disclosure part of the legislation. As I said, even though they don't go far enough, I hope they will be helpful in the end. Only time will tell whether that is the case. So the sourcing of both goods and services will be included under regulation, under the piece of legislation dealing with disclosure, as also will be a piece on the issue of dispute resolution and some mechanism that should be or could be in place when we get to that.

The Chair: Could you wrap up, please.

Mr Martin: Could I ask for unanimous consent for a couple of minutes more? This is really important to me, and I don't have much more to say. I just need to say what I have to say.

The Chair: Is there unanimous consent to add a couple of minutes? Agreed.

Mr Martin: I appreciate that.

The government has agreed to include me in the discussion on the development of regulations and the ultimate imposition of regulations, which gives me some comfort that I won't wake up one day to find out that regulations are passed and some of the things we have agreed to around this table are not included. I have both the commitment of the minister, because I met with him on this, and the minister's staff, Mr Williams, and I have the commitment of the civil servants, Mr Hoffman and Ms Harden, that every effort is going to be made to include the pieces we agreed to in discussion and that we may attempt to make it even better—go further and do something that might be even more helpful in the end.

1050

The changes that we've agreed on, just to put them on the record, are: a statement informing the prospective franchisee that the cost of goods and services acquired under the franchise contract may not correspond to the lowest cost of goods or services available in the marketplace. There will also then be another statement regarding volume rebates in regulation under information on the franchise offer which will call on the franchisor to state whether or not the franchisor or its associate receives any rebates, commissions, payments or other benefits from vendors as a result of purchases of goods or services by franchisees, including specific information on franchisees' buying, inventory obligations, restrictions and terms. There's a commitment as well on that piece to perhaps go even further in defining exactly what kinds of rebates or commissions or payments would be realized by the franchisor in relationship with the franchisee in that instance.

I'm happy that we're going to be looking at that and hopefully taking that further, and by both of those, hopefully running up a red light for potential franchisees that they really need to look at this very closely and scrutinize it, recognizing that this piece will not do what I had hoped we would be able to do in this round of legislation, which is to move to including in this bill something similar to section 5 of my bill, Bill 35, which would have given franchisees, even the ones existing now, who are actually the ones under the most stress at the moment regarding this issue, the right to source product wherever they could get it, as long as it wasn't a trademark-related issue.

We're not going there, we're not doing that, and because of that, there are going to be a whole lot of small business folks out there today, tomorrow and over the next while who will be quite disappointed, because they came forward and took a great chance in coming forward, particularly a number of them in the grocery industry, if you remember, to share with us the limited opportunity they have to enhance their potential to make sure that their operation is profitable and to actually participate actively in the local economy, supporting local producers, so that they and everybody, in turn, might do better. The reference in this legislation to that issue in regulation will not do anything for them, will not relieve them in any significant way re that whole problem and that whole issue.

However, having said that, and recognizing that some of this is activity that is actually governed by the federal government under the Competitions Act, the Competition Bureau, the government has agreed, through the influence and input and encouragement of both opposition parties, to send a letter to Mr Manley, the minister responsible for the Competition Act at the federal government, requesting that he meet with us so that we might share with him in this exercise they're going through now to make amendments to the Competition Act that might cover this area, and perhaps in that way give some of these folks the relief they're asking for and so desperately need if they're going to be successful themselves and if they're going to be allowed to participate in the way they want in the local economies surrounding or in the communities where they live.

So I am again thankful that the government has agreed with us to bring that forward to the federal government so that we might have it addressed. It's something we were able to do at this table, I think, because we were dealing with this bill at first reading as opposed to second reading, which gave us a bit more latitude as to some things we might suggest and want to, together, promote or have happen. I think that's something we can hang our hat on a little bit in terms of something we have done that was different and new and perhaps for the first time, which will set a bit of a precedent for this Legislature and hopefully will in the end be helpful to a whole lot of small business people in this province who are looking to us for some much-needed relief at the moment.

The other thing that I had some very serious concern about of course was the issue of the dispute resolution

mechanism. There are two pieces committed to by the minister and the government that they're willing to put in the regulation which I think will be helpful, at least in running up again a bit of a warning sign to potential franchisees to further look into this and make sure that when they sign the agreement there is something there that speaks to resolution of disputes, because I think it's central and so very important. The government has committed to "a statement describing mediation or other alternative dispute resolution processes as a voluntary attempt to resolve disputes with the assistance of a mutually agreed upon independent third party." That's a new piece in the regulatory regime that the government was considering doing, had we not had the discussions that we had.

They have also added a new piece to a second section there, which says, "A statement describing any internal or external mediation or other dispute resolution processes utilized by the franchisor and a brief description of the circumstances under which the process is utilized." Then it goes on, and this is the new addition: "A statement indicating that either party may propose mediation to the other party," in order to facilitate or to encourage that to actually happen.

So at least it's referenced and at least there's some indication to the franchisee that there's a need for this to be in place as they sit down at the table, hopefully with their lawyers, to sign these documents. There's also in this some encouragement to both parties to actually move to that kind of resolution of difficulty before considering the very costly and difficult process of going through the courts. So that's another piece that I think is really important.

The Chair: Mr Martin, if I could just indicate we're approaching the end of the second 10-minute period now.

Mr Martin: OK, thank you. There are a couple of other things in here that I think are important that were issues raised by the presenters as we went around the province. I think we can be satisfied and happy that at least they're in there. One is under information on the franchise offer, a need for a definition of conditions of termination, renewal and transfer of franchise. There were a number of franchisees, particularly those who have already been terminated and who are out there now trying to do other things, who in looking back on their experience would have liked to have had some reference in their agreement to conditions of termination, renewal and transfer of franchise before they actually got into it, as opposed to 10 years down the road when that actual event came up.

There's some reference as well to the need for training and other assistance programs presented by the franchisor, and also a need to define further things like the advertising fund; for example, the portion of funds spent on administrative costs, national campaigns and local advertising and how that balances out and what contribution that will make to the actual success of the franchisee.

The other piece and the last piece I will speak to this afternoon is a commitment by the government to include

under the fair dealing section of the act a reference to "commercial reasonableness" in defining fair dealing, something a number of people that I have faith in indicated was necessary if they were going to have some chance of success in proving somebody has been wronged in court. In their view simply putting "fair dealing" was too big, too wide, too prone to interpretation of various sorts. "Commercially reasonable" or "commercial reasonableness," according to them, will tighten that up and make it more useful and helpful in the long run.

Having said all that, I want to thank everybody for their patience and understanding. I'll be looking forward to taking what we have agreed on here today into the House so that myself and Mme Boyer and Mr Colle and others might have some fuller opportunity in second reading debate to put on the record some further thoughts and comments re this piece of legislation and particularly how we are still disappointed that it hasn't gone further and that the government hasn't seen it within their purview, at this point in time, to move to actually regulating the relationship, which I still think is absolutely necessary if we're going to respond in any way that respects and honours the stories we heard those four days as we went through public hearings across this province.

1100

Mrs Claudette Boyer (Ottawa-Vanier): I'll try not to take my 10 minutes. Tony has taken 10 minutes, and I will not repeat what he has said, which I agree with. First of all, I thank the government for having met with Tony, who gave his concerns. My party goes along with the concerns he brought.

Of course, during all the presentations and testimonies and the tour that we did we were all made aware of the difficulties encountered by many who have been involved with franchises. The number of presentations, like Tony said, did bring up that there is a serious problem, and I think this bill is needed.

We were always saying the current bill is lacking teeth. Maybe with these amendments the government is ready to put forward the teeth may be sharper. But I think we still had a few amendments that we would have liked to bring in, because the Liberal amendments to this bill were an attempt to fix the bill so it would have sharper teeth and address the concerns of all the people we met while we were on the tour.

Of course, we would have liked the complaints commissioner to be set up. The franchise registry was also very important to us. I'm grateful that the dispute resolution mechanism has been looked into a little further, just like the fair dealing.

I repeat that this bill is not what we were really looking at, but if this is a needed bill and if people outside are waiting to have something to debate—and like Tony was saying, there are a lot of court cases which can't move on because there's no legislation that will back this—I'm happy to say that the Liberal Party is glad to be co-operative to have this bill pass second reading as soon as possible. But we will still bring in what we

would have liked during the second reading. We will have a chance to bring in what we really thought would have been sharper, and we will have the amendments that we should have brought in.

I thank the government again for their goodwill and the recognition that something has to be brought in as soon as possible. Maybe this bill is better than nothing. It is a start. I will take this opportunity to say that the Liberals are ready to withdraw their amendments so that we can go clause-by-clause and go along with the government amendments.

Mr O'Toole: I'll be brief as well—I appreciate that—and also give other members a chance to make comments if they wish. I have prepared remarks that I will read. I want to start by saying how pleased I am at this point in what has been a very successful and very useful process. We've taken the time, I believe, to do the right thing.

I think you have to look back at the original intention of the ministry, which was to deal with an upgrade or update of the franchise legislation in three specific areas. We are all familiar with them, but for the record: disclosure, fair dealing and the right to associate.

The committee has heard a number of very important and insightful observations during our deliberations and tours. I'd like to thank all the participants for that. We're at a point where there seems to be a meeting of minds, and hopefully we'll have unanimous consent. That has always been the goal of the government and I think most members of the committee. We also realize that every piece of legislation there is may not go far enough, but I think we've achieved something very positive for the franchise sector, and this bill and the amendments will move us a great deal forward. It is a balanced package that will benefit franchisees, franchisors and small business, a very important part of the economy of Ontario.

I'd like to recognize the co-operation, goodwill and efforts on everyone's part to this point, with special mention of course of MPP Tony Martin and his assistant, Les Stewart. I thought he was a paid staff member at some point but I later found out he wasn't, but I'm still not convinced.

I'd like to thank everyone for their efforts and diligence. This has been a very interesting and informative process for me. It's a very complex area of partnerships and relationships, and it's in everyone's interest, especially the franchisees, to get through clause-by-clause and get the bill back into the House and passed so that we can turn our attention to the regulations. Mr Martin has assured us there is a schedule here, which would be submitted in some form, I believe.

In everything I've seen and heard, it never exempts either party from due diligence in the process. You can't legislate against stupidity. That's really what it comes down to. No one forces anyone to do that, to put their money out. I don't want to get into the debate. I think with goodwill here we can also deal with these amendments rather expeditiously. There are a lot of words on this on the record, and we've taken the time to do that.

I would like to take a special chance to thank Minister Runciman for allowing this process and the House itself for looking at a first-reading bill that could expeditiously be moved through, hopefully by the end of this particular session.

I would also like to thank the committee clerk and staff for their understanding. I know the clerk has had to make some unusual arrangements from time to time to accommodate each one of us, and me specifically perhaps. Ministry staff has been hard-working and focused in this exercise; Mr Hoffman, Ms Harden and Terry Irwin have been available and I think responsive.

I'd also like to thank the working team members, for the record. They have really participated actively in this process to achieve everyone's desire to move forward with updated franchise sector legislation. With that, those are my comments.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): Echoing my colleague's comments, I also want to thank everyone for allowing the opportunity for all of us as a committee to travel across the province, because I think, as Mr Martin mentioned, we could have taken a high road or a shortcut or not have had as many hearings. I think the fact that we went to some of the places like Sault Ste Marie, Mr Tony Martin's own riding, did bring out some of these special and unique issues and regional difficulties which stem from wanting local sourcing. I think that's a big issue.

I did say previously in the committee as well that some of these franchise systems, though, are based on a total package of down payment, leasehold improvements and sourcing. So franchisors do take into account that all this sourcing is going to be done through a central system, whether that's the most economical way or not. They have, I'm sure, built that into their profit margins. It would have been very difficult for us to legislate that, but I do understand, as the parliamentary assistant has said, that in any of these agreements that the franchisee and franchisor will make, they could always put in some local sourcing provisions. I think that's important. Just because we highlighted it, they should be able to put those provisions in.

I also want to thank Minister Runciman, because it does show the openness of the process, where he is allowing especially Mr Martin to be part of the development of the regulations. I think that's very important. Usually it's lip service; usually governments have been known to go ahead with whatever. But this is very important, and I'm very happy that Mr Martin is going to be included.

1110

As in any business, there are success stories and there are failures. I sometimes feel that the franchisees go into these agreements with unreasonable expectations. Just because most franchisees are successful, that does not mean 100% will be. That also should be part of the due diligence. Circumstances change. E-commerce changes the way things are being done. If something is good today, five years down the road it might not be as profitable in that sense.

I think some of the issues have been brought forward, and I'm happy that every party came to a compromise and we're going to have a speedy approval of this so that the people out there who are going to get into these agreements will benefit from it. There's always more to be done, let's face that, but I think the efforts we made to come to some agreement are good and commendable.

Mr Garfield Dunlop (Simcoe North): I'd like to thank the committee, the staff and the clerk's office for their participation in this. I'm very pleased to be able to take part in these public meetings on Bill 33. We listened very carefully to a number of individuals throughout the province and we heard some very disillusioned people and some very brave individuals come forward, some very successful stories and some very unsuccessful stories.

Mr Martin, I know you've got a lot of concerns with the legislation and I applaud you for the efforts you've put into the work of this committee. However, I believe that the proposed amendments we've seen here or will see here shortly, added to the existing Bill 33 will create good, balanced legislation for the time being. Maybe it is a good first start. I'm hoping that's the case. It responds to the concerns of both the franchisors and the franchisees. Again, I hope this bill will continue to encourage the investment and the type of job creation we've seen in Ontario and that we can carry on and get it passed before the end of this session.

The Chair: Is there any further comment? Mrs Boyer, you indicated that you wanted to—

Mrs Boyer: I think Mr Colle would have a couple of words to say, if possible.

The Chair: There were about four minutes left on the clock for your time so, Mr Colle, if you would contain your comments to that.

Mr Mike Colle (Eglinton-Lawrence): Certainly we, the opposition, have worked co-operatively with Mr Martin and the committee and Mr O'Toole, trying to do the best we could. There are some very immediate, pressing problems that franchisees face, and we were trying to do our best. We applaud, certainly, the efforts on everybody's part to try to meet these needs. It hasn't been easy. It seems that the minister has a sincere interest in doing the right thing.

Our frustration, as you know, is the fact that we are concerned that one of the fallouts of this bill would be that it might give people a false sense of security, as much as it does help and is a good first step, because this is a very dangerous business area. There is no doubt the franchisors are carrying most of the clout, and this isn't going to take away some of the clout despite its attempts to do that.

I agree with Mr Dunlop, whose sentiments reflect mine. A lot of these franchisees are brave people. They risk their life savings, they try to set up a business that they think is legitimate, that they think will get them through their years and enable them to provide for their families.

I don't agree with the other comments that you can't legislate stupidity and that they have unreasonable expectations. It's the role of government to make the playing field level for both big and small, and in the franchise business it is not level. This bill is not going to make it level in any way, shape or form. We have to be very frank with people. It is an extremely dangerous business area to get into, and people should be warned that the fancy brand names don't protect you as an individual. You risk a great deal, in some cases more than if you were to go to into the field yourself as an individual entrepreneur. That message has to be out there loud and clear.

I'll give you one recent example of a Ford dealer in my area who was not too far down the street from a Mercury dealer. As you know, Ford now has a new policy where Mercury dealers are now Ford dealers. So basically in the same neighbourhood you have two competing franchises because of the change in name from Mercury to Ford. They're selling the same cars at the Mercury dealer's as they're selling at the Ford dealer's. There's a group of Ford dealers now taking Ford to court, and these are car dealers who you think are reasonably well off. They're not going to have much chance. They're going to spend a lot of money trying to protect their rights to do business because of this change that Ford has made.

It is a good first step. It probably has to go through at this point, but it's still very imperfect. We should not try to give people the impression that this solves the problem. There is a serious problem with this type of business undertaking, and people had better be aware, caveat emptor. This business is fraught with a lot of land mines. Be very, very careful; that's the message we should give to anybody contemplating owning or buying a franchise.

The Chair: We're ready to begin clause-by-clause consideration of Bill 33. Ms Boyer has indicated that the Liberal caucus is withdrawing the amendments that have been submitted. Mr Martin, I understand that you wish to place a similar statement on the record?

Mr Martin: I think I did.

The Chair: I think you said that you were going to. Just for the record, will you?

Mr Martin: Yes.

The Chair: That's an indication that the New Democratic Party caucus has withdrawn the amendments they have tabled. Mr Martin, you had a request for unanimous consent?

Mr Martin: Yes. There are two amendments that we want to place that will get us to the consideration of the regulations that I read into the record earlier. There is an amendment to subsection 5(3).

The Chair: We don't need to read it yet.

Mr Martin: OK. And another amendment to our clause 13(1)(d.1).

The Chair: Is there unanimous consent to accept these amendments for consideration?

Mr Martin: I'm sorry. There's also a third amendment, if you don't mind. It's to change the short name of the bill to the Arthur Wishart Act (Franchise Disclosure), 2000.

Mr O'Toole: Yes, we agree.

Mr Steve Gilchrist (Scarborough East): So in effect you're not withdrawing amendment 58.

Mr Martin: No. Actually we're amending amendment 58. Where it says "fairness in Franchising," because this bill really isn't about fairness in franchising, it's about disclosure and the right to associate, we're putting in brackets there "Franchise Disclosure."

The Chair: Is there unanimous consent to accept these three amendments for consideration? Agreed.

The clerk, I believe, will distribute copies of these amendments, or has. I have two of them in front of me. I don't have the third one yet. The third one will be photocopied and distributed to committee members.

May I ask unanimous consent from the committee, following that decision made by the committee, to reorder the amendments before us for consideration? Agreed.

I believe we can begin then. We'll deal first of all with section 1. Are there any comments, questions or amendments?

1120

Mr O'Toole: On subsection 1(1):

I move that the definition of "franchise" in subsection 1(1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"'franchise' means a right to engage in a business where the franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make such payment or payments, to the franchisor, or the franchisor's associate, in the course of operating the business or as a condition of acquiring the franchise or commencing operations, and,"

The Chair: Do you have any comments to this, Mr O'Toole?

Mr O'Toole: No comments.

The Chair: Is there any debate on this amendment? Seeing none, is the committee ready to vote? All those in favour, please indicate. That's carried unanimously.

Are there any further amendments to section 1?

Mr O'Toole: I move that subclause (b)(i) of the definition of "franchisor's associate" in subsection 1(1) of the bill be struck out and the following submitted:

"(i) is directly involved in the grant of the franchise,

"(A) by being involved in reviewing or approving the grant of the franchise, or

"(B) by making representations to the prospective franchisee on behalf of the franchisor for the purpose of granting the franchise, marketing the franchise or otherwise offering to grant the franchise, or"

The Chair: Do you have any comments to make, Mr O'Toole?

Mr O'Toole: No comments.

The Chair: Any debate on this amendment? Seeing none, all those in favour, please indicate. Carried unanimously.

Are there further amendments to section 1?

Mr O'Toole: Amendment number 3.

I move that the definition of "prospective franchisee"—

Interjection.

Mr O'Toole: No, it's "franchisee." That's a small typo there, if you could amend that.

—"in subsection 1(1) of the bill be struck out and the following substituted:

"'prospective franchisee' means a person who has indicated, directly or indirectly, to a franchisor or a franchisor's associate, agent or broker an interest in entering into a franchise agreement, and a person whom a franchisor or a franchisor's associate, agent or broker, directly or indirectly, invites to enter into a franchise agreement; ('franchisé éventuel')"

The Chair: Any comments on this section, Mr O'Toole?

Mr O'Toole: No comments.

The Chair: Any debate on the section, committee members? Seeing none, all those in favour, please indicate. It's carried unanimously.

Are there any further amendments to section 1? Are there any comments or questions on the section as a whole? Are there any comments or debate on section 1? Shall section 1, as amended, carry? Section 1 is carried.

We move to section 2. Are there any amendments to section?

Mr O'Toole: I'm looking at amendment number 5, a government motion.

I move that subsection 2(1) of the bill be amended by striking out "with respect to a renewal or extension of such a franchise agreement" in the third, fourth and fifth lines and substituting "with respect to a renewal or extension of a franchise agreement entered into before or after the coming into force of this section."

The Chair: Any comments? Any debate?

All those in favour? Carried. That was unanimous again.

Are there any further amendments to section 2? Is there any comment or debate on section 2? Seeing none, shall section 2, as amended, carry? No dissent. Section 2 is carried.

Moving to section 3, are there any amendments on section 3?

Mr O'Toole: Section 3 is government motion 17 here.

I move that section 3 of the bill be amended by adding the following sections—

Mr Gilchrist: Subsections.

Mr O'Toole: Subsections, pardon me. I appreciate that, Mr Gilchrist.

Mr Gilchrist: You're more than welcome.

Mr O'Toole: I may alternate the readers of these amendments.

"Right of action

“(2) A party to a franchise agreement has a right of action for damages against another party to the franchise agreement who breaches the duty of fair dealing in the performance or enforcement of the franchise agreement.

“Interpretation

“(3) For the purpose of this section, the duty of fair dealing includes the duty to act in good faith and in accordance with reasonable commercial standards.”

The Chair: Any comments, Mr O’Toole?

Mr O’Toole: No. This was something brought up repeatedly during public hearings, the reasonable commercial standards interpretation, and I think it’s an improvement.

The Chair: Is there any debate on this amendment? Seeing none, all those in favour, please indicate. It’s unanimous. Carried.

Any further amendments to section 3? Any debate or comments on section 3 as a whole? Seeing none, shall section 3, as amended, carry? Hearing no dissent, section 3 is carried.

We move to section 4. Are there any amendments to section 4? Is there any comment or debate on section 4 as a whole? Hearing none, shall section 4 carry? Hearing no dissent, section 4 is carried.

Are there any amendments to section 5?

Mr O’Toole: Yes, government motion 23, subsections 5(1.1) and 5(2).

I move that subsection 5(2) of the bill be struck out and the following substituted:

“Methods of delivery

“(1.1) A disclosure document may be delivered personally, by registered mail or by any other prescribed method.

“Same

“(2) A disclosure document must be one document, delivered as required under subsections (1) and (1.1) as one document at one time.”

The Chair: Any comments? Mr O’Toole.

Mr O’Toole: No comments.

The Chair: Any debate on this amendment? Seeing none, all those in favour, please indicate. It’s unanimously carried.

Are there any further amendments to this section?

Mr Martin: Yes. I move that subsection 5(3) of the bill be amended by striking out “and” at the end of clause (c) and by adding the following clause:

“(c.1) statements as prescribed for the purposes of assisting the prospective franchisee in making informed investment decisions; and”

1130

The Chair: Any comments, Mr Martin?

Mr Martin: No.

The Chair: Any debate on this amendment? Seeing none, all those in favour, please indicate. Those opposed? Carried.

Are there any further amendments to section 5?

Mr O’Toole: I move that clause 5(6)(c) of the bill be struck out and the following substituted:

“(c) the grant of an additional franchise to an existing franchisee if that additional franchise is substantially the same as the existing franchise that the franchisee is operating and if there has been no material change since the existing franchise agreement or latest renewal or extension of the existing franchise agreement was entered into;”

The Chair: Any comments, Mr O’Toole?

Mr O’Toole: No comments.

The Chair: Any debate on this amendment? Seeing none, all those in favour, please indicate. Those opposed? Mr O’Toole, you almost got in under the opposed there.

Mr O’Toole: Pardon?

The Chair: You almost got counted under the opposed there. OK, that is carried.

Any further amendments to section 5? Any comments or debate on section 5? Shall section 5, as amended, carry? Hearing no dissent, section 5, as amended, is carried.

Section 6. Are there any amendments?

Mr O’Toole: I move that subsection 6(3) of the bill be amended by striking out “personally, by registered mail or by fax” in the second and third lines and substituting “personally, by registered mail, by fax or by any other prescribed method.”

The Chair: Any comments, Mr O’Toole?

Mr O’Toole: No comments.

The Chair: Any debate on the amendment? Seeing none, all those in favour, please indicate. Those opposed? Carried.

Further amendments to section 6?

Mr O’Toole: I move that subsection 6(4) of the bill be amended by adding the following clause:

“(e) on the day determined in accordance with the regulations, if sent by a prescribed method of delivery.”

The Chair: Any comment or debate on this amendment? All those in favour, please indicate. Those opposed? Carried.

Any further amendments to section 6? Any comment or debate on section 6? Shall section 6, as amended, carry? Hearing no dissent, section 6, as amended, is carried.

Section 7: Are there any amendments?

Mr O’Toole: I move that subsection 7(1) of the bill be amended by adding the following clauses:

“(a.1) the franchisor’s agent;

“(a.2) the franchisor’s broker, being a person other than the franchisor, franchisor’s associate, franchisor’s agent or franchisee, who grants, markets or otherwise offers to grant a franchise, or who arranges for the grant of a franchise;”

The Chair: Any comments or debate on the amendment? All those in favour, please indicate. Opposed? Carried.

Further amendments to section 7?

Mr O’Toole: I move that subsection 7(6) of the bill be struck out.

The Chair: Any comment or debate on the amendment? All those in favour, please indicate. Opposed? Carried.

Further amendments, Mr O'Toole?

Mr O'Toole: Yes. I move that the bill be amended by adding the following section:

"Joint and several liability

"7.1(1) All or any one or more of the parties to a franchise agreement who are found to be liable in an action under subsection 3(2) or who accept liability with respect to an action brought under that subsection are jointly and severally liable.

"Same

"(2) All or any one or more of a franchisor or franchisor's associates who are found to be liable in an action under subsection 4(5) or who accept liability with respect to an action brought under that subsection are jointly and severally liable.

"Same

"(3) All or any one or more of the persons specified in subsection 7(1) who are found to be liable in an action under that subsection or who accept liability with respect to an action brought under that subsection are jointly and severally liable."

The Chair: Are there any comments or debate on the amendment? All those in favour, please indicate. Opposed? Carried.

Are there any further amendments to section 7? Any comments or debate on section 7?

Mr O'Toole, the last amendment that you read actually becomes its own section, 7.1. My apologies on that. If, with the committee's agreement, we can just back up, section 7 was amended by government amendments on pages 36 and 37, which were passed. I hear no further debate or comments on section 7 as a whole.

Shall section 7, as amended, carry? Hearing no dissent, that is carried.

The government amendment on page 38, which was carried by the committee, creates a new section, 7.1. Is there any comment or debate on section 7.1? Shall section 7.1 carry? Carried.

Section 8: Are there any amendments to section 8? Any comment or debate on section 8? Is there any warning about what I'm doing about section 8 from the back corner there?

Mr O'Toole: No, it's fine. Go ahead.

The Chair: Shall section 8 carry? Carried.

Sections 9, 10, 11 and 12: Are there any amendments that are coming forward in those sections? Is there any comment or debate on those sections? Shall sections 9, 10, 11 and 12 carry? Carried.

Section 13: Are there any amendments to section 13?

Mr Martin: I move that subsection 13(1) of the bill be amended by adding the following clause:

"(d.1) prescribing statements for the purpose of clause 5(3)(c.1);"

The Chair: Do you have any comments, Mr Martin?

Mr Martin: No.

The Chair: Any comment or debate on this amendment? Seeing none, all those in favour, please indicate. Opposed? Carried.

Any further amendments to this section?

1140

Mr O'Toole: Yes, government motion 54.

I move that subsection 13(1) of the bill be amended by adding the following clause:

"(h.1) prescribing methods of delivery for the purposes of subsections 5(1.1) and 6(3), and prescribing rules surrounding the use of such methods, including the day on which a notice of rescission delivered by such methods is effective for the purpose of clause 6(4)(e)."

The Chair: Any comment or debate on this amendment? Seeing none, all those in favour, please indicate. Opposed? Carried.

Section 13: any comment or further amendments? Seeing none, shall section 13, as amended, carry? Carried.

Section 14: any comments, debate or amendments? Shall section 14 carry? Carried.

Section 15: Are there any amendments to section 15?

Mr Martin: I move that section 15 of the bill be struck out and the following substituted:

"Short title

"15. The short title of this act is the Arthur Wishart Act (Franchise Disclosure), 2000."

Mr O'Toole: I'd like to add the word "act" at the end of that: "(Franchise Disclosure Act)." Isn't that the way it's supposed to be?

Mr Gill: I think you said that.

Mr Martin: It was just "(Franchise Disclosure)."

The Chair: Just a bit of advice from legislative counsel in terms of appropriate wording. The short title of the act is the "Arthur Wishart Act" with "(Franchise Disclosure)" as the description. It would be inappropriate to add the word "Act" there again.

Any comment or debate on this section?

Mr Gilchrist: I certainly would like to support Mr Martin's motion on this. Mr Wishart was certainly an exceptional individual and I appreciate that, given the history of the franchise legislation we're dealing with here today could probably be traced back to Mr Wishart's own activities, and the connection he has with the riding Mr Martin represents today, it's quite appropriate.

I would like to put on the record, though, Mr Martin, that it is a very exceptional honour we are conferring on Mr Wishart. I wouldn't want it to become an habitual practice in this Legislature that we name bills after ourselves. I hope you agree with me that self-aggrandizement is not the thing we want as a hallmark of our legislation, but in fact representing the greater good. I would be loath to see other cabinet ministers, even from our side of the House, recognized in this way.

This is a unique honour, but I think it bears stating that this really should be an exception. I'm very pleased to support your motion and think it is an honour due to Mr Wishart, but in addition it would cheapen his memory if this became just one of.

Not to belabour the point, I think this is something we want to deal with as an exception to common practice in this Legislature. I appreciate your bringing this forward and honouring a past legislator in this House.

Mr Martin: I guess I don't share the same sentiment as the member about how we name acts and whether we should name them after people. Your government has shown itself to be capable of some very creative naming of acts, often breaking with tradition in this place in some interesting ways that we have pointed to in the Legislature, sometimes adding some colour to what we do around here.

I think it's important, from time to time, to remember those who went before us, particularly if they have done important work that connects with something we are doing later and that might add a sense of history to it and lend some opportunity for those who will look at this to actually perhaps reflect back. If they look at this act and see this, they may want to explore why we would have put that name on it, and then go back to the Grange report to see where all this started. It adds in a number of different ways to the importance of this and the opportunity it affords people who are interested in this to find out why and how and where.

Mr Wishart, not a New Democrat but a very staunch and well-placed Conservative in the community of Sault Ste Marie, served well and garnered nothing but respect from anybody who had any involvement with him in trying to get issues resolved or to bring things forward to the Legislature, and also a person who contributes in our community in that he has a wonderful family who continue to live in Sault Ste Marie. In fact, at one point, when I was trying to shed some light on the need for legislation in this area, some of his family members showed up at a function we were having, because I had indicated that it flowed from him and some work he had done. Some interest is still percolating out there in taking a look at what he did and that it now actually has the possibility of seeing the light of day, which it will, even if only to some small degree, compared to what some of us would like to have seen.

Those are just my comments.

Mr Gilchrist: I really want to stress to Mr Martin that there is not the slightest reservation in supporting Mr Wishart's name being included on this. I really want to impress on you that we think this is typical of how you have co-operated throughout this process. I know we disagree on an awful lot of things in the Legislature, but I think what we have seen here today is far more what a lot of us expected would be the case when we first got elected, that members from all sides would try to work

together to fashion bills that arrived at the best consensus.

I appreciate that you have made some concessions. You asked at the outset of your comments whether we would give you the assurances that we cared as much that the regulatory framework would support this bill in the way we would all like to see it supported. You certainly have my assurance, and I'm sure I speak for my colleagues. I think the fact that you are recognizing a past member of a different party is very much in the same spirit.

I just wanted to put on the record that I wouldn't want any of our colleagues or anyone else sitting there thinking it is now open season to add their names to bills, because I really do think that would cheapen the work Mr Wishart did. I really do want to put on the record: Thank you for this honour you have accorded him.

The Chair: Any further debate on this amendment?

All those in favour of the amendment, please indicate. Carried unanimously.

Are there any further amendments to section 15? Seeing none, is there any debate or comment on section 15?

Shall section 15, as amended, carry? Hearing no dissent, that is carried.

Are there any amendments to the long title of the bill? Seeing none, shall the long title of the bill carry? Hearing no dissent, that is carried.

Is there any further debate on Bill 33, as amended? Seeing none, shall Bill 33, as amended, carry? Hearing no dissent, that is carried.

Shall I report the bill, as amended, to the House? Agreed.

Thank you very much to all committee members.

Mr O'Toole: Chair, may I just make one comment, now that we have formally completed the work? I would just like to say, in a sort of flippant way, that I'm just as glad Mr Martin didn't call it the Les Stewart bill. I do appreciate all his reports to the committee; I have a whole box full. Thanks very much to Les.

The Chair: The committee's appreciation to all the staff of the clerk's office and the legislative offices and, of course, ministry staff and the minister's office for their support in our work. I echo the committee's thanks to the minister and to the government House leader for this interesting experience of dealing with a bill after first reading.

Thank you to all the committee members, and we will see you in the House.

The committee adjourned at 1150.

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Mercredi 17 mai 2000

**Standing committee on
regulations and private bills**

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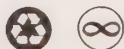
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS

Wednesday 17 May 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Mercredi 17 mai 2000

*The committee met at 1005 in committee room 1.*NER ISRAEL YESHIVA
COLLEGE ACT, 2000

Consideration of Bill Pr20, An Act respecting Ner Israel Yeshiva College.

The Chair (Ms Frances Lankin): The standing committee on regulations and private bills is meeting today to consider a number of Pr bills. We also have consideration of a comprehensive response to the first report on regulations, which the committee will deal with after we've concluded deliberations on the Pr bills.

The first item before us is Bill Pr20, An Act respecting Ner Israel Yeshiva College. The sponsor is Mr Young, MPP. Mr Young, would you come forward, please, and introduce the applicants who are here with you who will be presenting today.

Mr David Young (Willowdale): Thank you very much for the opportunity of presenting this proposed legislation. I am pleased to have with us today Rabbi Friedman from the yeshiva college, and also Stephen Gross who is the solicitor representing that institution. I would suggest that Mr Gross make a brief presentation and then we will all be here to answer any questions, if necessary.

The Chair: Welcome, gentlemen. Go ahead.

Mr Stephen Gross: First of all, I'd just like to thank everyone for all their help in getting us here today.

At the outset, the reason we really need this bill, or this authority to grant degrees, is so that we can remain competitive. We have found that we're experiencing a brain drain. There are many schools in the States, religious academies that offer degrees. They offer joint degrees with well-known universities.

There is one in Providence, Rhode Island, that offers a joint degree with Brown University; there is Ner Israel Rabbinical College, which I believe has no relationship to this Ner Israel, that offers their own degrees as well as joint programs with Johns Hopkins, the University of Maryland UMBC and Loyola.

We really need to keep our students here, specifically in religious studies, so that they can be recognized with their degrees. Not everyone is going to be a rabbi, but still it's important that they be recognized for the type of study they're doing. They can then present their degrees to York University, the University of Toronto, and go

further with that. This would really assist us in that regard.

The Chair: Rabbi Friedman, do you have any comments you wish to make?

Rabbi Moshe Friedman: I just want to add to Mr Gross's comments. We're not a new kid on the block. We've been established since 1959 and basically our studies to date, without the fact of giving out degrees, have been of high quality and have been recognized. We are a member of the program that's a distinguished group, an association of rabbinical colleges in the States. They included us because of our reputation, and of course we had to pass their tests. So we really have had the curriculum in place for 40 years.

It's not a difficult transition, but as Mr Gross mentioned, people like to have the degree. It helps them to continue their education. We have an agreement that's been in place already for about 13 years which we implemented with York University, that they recognize, even as we speak, our program and allow us five credits for our rabbinic program. We are now engaged in trying to meet with the different universities, wanting to be able to give a grant. But at the present moment, even if we are given this privilege, I doubt if any of our students would get into Harvard. So this is really what we're working on, to be recognized.

The program has been in effect for the past 40 years. We've graduated many great Talmudic scholars and many who went on in the community. If you look around you, you would see virtually in every profession graduates of Ner Israel, which has strengthened this community. It's an important program, as Mr Gross mentioned, because there is a brain drain. People go elsewhere.

If there are any questions, I will be happy to deal with them.

The Chair: Mr Young, did you have any further comments?

Mr Young: If I may just add two other points, and then of course we're available for any questions that may exist.

The first is that it is my understanding that there is already a similar institution within the city of Toronto with similar status to that which is being sought by this institution, so the precedent has been set. There is a yeshiva in the city. This institution would be just outside of the city.

The other point I wanted to make, and of course that's subject to clarification from Mr Coburn or others, is that my understanding is that the ministry—not Mr Coburn's ministry but the Ministry of Training, Colleges and Universities—has no difficulty with the proposal that is in front of you at this instant.

The Chair: Are there any interested parties who have attended today to make representation on this bill? None. May I ask Mr Coburn, the parliamentary assistant, are there any comments from the government?

Mr Brian Coburn (Carleton-Gloucester): We have no difficulties with this at all. There is an individual here from the Ministry of Training, Colleges and Universities if there are any questions. It is supported by the ministry.

The Chair: I think that's helpful, then.

Questions from the committee either of the applicants or Mr Coburn or the staff who have come from the ministry? If you have specific comments we can ask that person to come forward.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): Basically I am certainly in support of this. In light of what my colleague Mr Young said, I guess the brain drain is just across the road then. There is another college granting those degrees, so it's not really that people have to go to the States. I guess they could go to this other college.

Mr Young: I think they're at their capacity and so the overflow is in fact heading towards the United States. Rabbi, is there more to that?

Rabbi Friedman: Which college are you referring to? Are you talking to the one that's in Toronto or out of Toronto?

Mr Young: I think the question was, can the college that's currently situated in Toronto—

Rabbi Friedman: They're basically a post-graduate school. They don't give undergraduate degrees. We work together actually. I don't think they have given out any degrees yet. We have a larger school. We're better situated. We have a high school. We begin with high school and therefore our students are more comfortable with the continuity of staying in our school. There is no conflict. I don't know if to date they have given any degrees. They also received a degree I think—

Mr Young: They have the ability to.

Rabbi Friedman: Basically it's a smaller school and it's a post-graduate school, and I don't see any conflict with that.

The Chair: Any further questions from committee members? Any final comments you want to make?

Mr Young: No, thank you, Madam Chair. I don't think there's anything further we wish to add at this time.

The Chair: Are the members ready to vote then?

This is Bill Pr20, An act respecting Ner Israel Yeshiva College, sponsored by Mr Young, MPP. Is there anyone intending to put forward any amendments at this point in time? Fine.

Shall section 1 through section 11 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Agreed.

Thank you very much. We appreciate you joining us here today.

REDEEMER UNIVERSITY COLLEGE ACT, 2000

Consideration of Bill Pr19, An Act respecting Redeemer Reformed Christian College.

The Chair: The next order of business is Bill Pr19, An Act respecting Redeemer Reformed Christian College, being sponsored by Brad Clark, MPP. Mr Clark, would you introduce the applicants who are here.

Mr Brad Clark (Stoney Creek): I'll actually ask them all to introduce themselves. It will be a little bit more efficient.

Mr Albert Bakker: Good morning. My name is Albert Bakker. I'm the solicitor. I have with me Dr Justin Cooper, the president; Mr Bill van Staal Duinen, vice-president of development; and Dr Elaine Botha, vice-president, academic.

The Chair: Mr Clark, have you have any opening comments or should we go directly to the applicants?

Mr Clark: Just go right to the applicants, Madam Chair.

Mr Bakker: I would like to have Dr Cooper do the presentation, as president of the college.

Dr Justin Cooper: Thank you very much for taking the time to review our private bill and also for giving us this opportunity to make some introductory remarks.

It was almost two years ago, on June 17, 1998, that we were also before this committee. At that time we came forward as an established institution offering academic programs of high academic quality. Based on that, the committee endorsed an amendment to our provincial charter enabling Redeemer College to grant bachelor of arts and bachelor of science degrees commensurate with our Christian liberal arts and science programs.

Now we're before you this morning to request that the process initiated two years ago be completed by enabling us to change our institutional name so that it is consistent with our identity as a degree-granting institution. Specifically, we're requesting to be known as Redeemer University College.

In Canada a university college denotes an undergraduate university. There are some 12 university colleges that are members of the Association of Universities and Colleges of Canada, to which we also belong and have been a member since 1985.

We believe the name Redeemer University College describes us appropriately because we do not presently offer graduate programs as larger universities do.

Let me also say that we appreciate very much the co-operation we've received from officials of the Ministry of Training, Colleges and Universities, one of whom is here today. We also appreciate the support of the minister herself, the Honourable Dianne Cunningham, and also the support of our sponsor, Mr Brad Clark.

At this time we would be happy to answer any questions the committee might have.

The Chair: Are there any interested parties who have come forward to make representation on this bill? Seeing none, committee members, are there any questions you would like to put to the applicants? Actually, before I do that, I should go to Mr Coburn. Are there comments from the government?

Mr Coburn: There are no objections. It is supported by the Minister of Training, Colleges and Universities.

The Chair: Any questions?

Mr Clark: I just want to raise the point that all of the sitting MPPs in Hamilton-Wentworth support the bill, from all three parties.

The Chair: Yes, I've been lobbied by Mr Christopher.

Mr Clark: I suspected as much.

The Chair: I kept telling him, "I don't have a vote unless it's tied, Dave," but he's tenacious.

Mrs Claudette Boyer (Ottawa-Vanier): Just to be clear, the name right now is Redeemer Reformed Christian College and you want to change it to Redeemer University College?

Dr Cooper: That is correct.

Mrs Boyer: OK, fine. I just wanted to be sure.

The Chair: If there are no further questions, are the members ready to vote on this bill? We're very productive today, aren't we? Moving along, is anyone intending to put forward any amendments?

Mr Clark: I have a motion. It's not an amendment, though. We can deal with it at the very end, dealing with the printing costs of the bill.

The Chair: OK, that will be at the end.

Shall sections 1 through 4 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? It shall be done.

Mr Clark: I move that the committee recommend to the House that the fees and the actual costs of the printing at all stages be remitted on Bill Pr19, An Act respecting Redeemer Reformed Christian College.

The Chair: There is a motion before us. Is there any debate on the motion? Any questions? All those in favour, please indicate. Those opposed? The motion is carried.

Thank you very much. We appreciate your taking the time to be here with us today. Best of luck on your continued journey.

Before we call the next matter forward, we've had an indication of one interested party who wished to participate who couldn't make it today and who will be participating over a phone link. We need about five minutes to test the link and the sound levels so that it works. So at this point in time, with the agreement of committee members, I'm going to recess for five minutes.

The committee recessed from 1021 to 1028.

TOWN OF GREATER NAPANEE ACT, 2000

Consideration of Bill Pr22, An Act respecting the Town of Greater Napanee.

The Chair: The next item of business before the committee is Bill 22, An Act respecting the Town of Greater Napanee. Mr Lucas, can I confirm that you can hear us?

Mr Shaune Lucas: Yes, I can. Thanks very much.

The Chair: Please, at this point in time, I'm going to have to ask that the noise levels be kept down so that I can hear the party on the phone. I know you responded, but Mr Lucas, again, could you indicate if you can hear me all right?

Mr Lucas: Yes, I can.

The Chair: Could I ask the technicians if there is a way to turn up the volume on Mr Lucas' voice? I'm having trouble hearing him.

The Chair: OK, that's good enough. I can hear you now.

Just to indicate again on the record that we are being joined by telephone link with an interested party, Shaune Lucas, and we will hear from him a bit later in the presentation.

Committee members, to confirm that you have had distributed to you some documentation which actually came around yesterday, I believe, from Ms Dombrowsky. Today, circulated are some further representations from the town of greater Napanee and a presentation by Andrew Gonsalves, an interested party, who will be speaking. Everyone has all of these materials? OK.

Bill Pr22, An Act respecting the Town of Greater Napanee, is being sponsored by Leona Dombrowsky, MPP. Ms Dombrowsky, could you introduce the applicants who have come with you today, and if you have any opening remarks, feel free as well.

Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington): I would be very pleased to introduce the people from my riding who are with me this morning. I would also welcome Mr Lucas, who I believe is with us by telephone. Good morning, Mr Lucas.

Mr Lucas: Good morning.

Mrs Dombrowsky: I also have with me the president of the Rural Ratepayers' Association for the town of greater Napanee, Mr Andrew Gonsalves. To the right of Mr Gonsalves is Mr Timothy Wilkin, the solicitor for the town of greater Napanee, and beside him is Mr Raymond Callery, the clerk administrator for the town of greater Napanee.

It was in October 1999 that I was notified by the municipality of their will to change the part of the ministerial order with regard to the town of Greater Napanee that would direct that after the municipal election of the year 2000, three members of council would receive weighted votes, so that at the council table three members would have two votes and two members would have one vote. I indicated to the municipality that, as the local

member, I believed I had a responsibility to bring forward the bill on their behalf as a private bill.

I also indicated to them that I had received letters and communication from constituents who were concerned about the change. I would refer members of the committee to the correspondence and the petitions that have been presented to the Legislative Assembly with regard to those concerns.

It is not my intention to take a lot of time this morning. You've had an opportunity to read the concerns of the constituents that would perhaps be contrary to some of the presentation that you will hear this morning on behalf of the town of Greater Napanee.

As the local representative, I have an obligation to the people whom I represent to ensure that the people who will be making the decision this morning have the benefit of understanding both sides of this issue. It perhaps is not as neat and tidy as the two previous presentations that you heard earlier today. It's not a simple issue, but unfortunately there has to be a simple answer.

I hope I might have some concluding remarks, Madam Chair. At this time I would yield the floor to the people from my riding.

The Chair: If we may begin with the applicants. Mr Wilkin, will you be presenting?

Mr Timothy Wilkin: Yes, Madam Chair, and thank you very much.

First let me thank the committee for taking the time to listen to the municipality's request with respect to this private bill. I'd also like to bring to the committee greetings from the council of the town of Greater Napanee and also their apologies that no members of council could be here today. Unfortunately, all of their individual personal work schedules would not allow them to be here, but they certainly are very familiar with the submissions that are being made this morning.

As the information indicates, this application for a private bill is being made by the council of the town of greater Napanee. The purpose of Bill Pr22, as Ms Dombrowsky has indicated, is to eliminate the weighted voting provisions that are contained in the order of the Minister of Municipal Affairs and Housing that restructured this municipality and created it as of January 1, 1998. Under the terms of that order, it stipulates that if any wards have more than 2,500 electors, then beginning with the elections in 2000, the ward councillors from those wards would have two votes and wards with less than 2,500 would have one vote. As Ms Dombrowsky has pointed out, the demographics are such that that would mean that three out of the five councillors representing those wards would have two votes.

The result would be that you would have a council of seven, because there is also a mayor and a deputy reeve who is effectively a deputy mayor, where three out of those seven had a total of six votes. In other words, they would have six of the 10 votes on matters before council. The purpose of Bill Pr22 is to eliminate that weighted voting arrangement and essentially maintain what is now

the status quo, which has been the situation since January 1, 1998, of one person and one vote.

I'd like to give the members of committee a brief overview of the town of Greater Napanee, in case you're not entirely familiar with what we're talking about. There is a package that I believe the clerk has distributed this morning. It consists of two maps and also a bit of a fact sheet, which I hope is of assistance to the committee.

Just very quickly, the town of Greater Napanee is located in eastern Ontario. It's about midway between the city of Belleville to the west and the city of Kingston to the east. It's about 55 kilometres long and about 30 kilometres wide and has a total area of about 206 square miles. The municipality was established on January 1, 1998, as I indicated, by a minister's restructuring order.

It was part of a larger restructuring of the entire county of Lennox and Addington that had previously consisted of 13 municipalities. It reduced them down to four municipalities. In terms of the town of Greater Napanee, it amalgamated five of the 13 to form the town of greater Napanee. The previous five had been the town of Napanee itself and also the townships of Richmond, Adolphustown, North Fredericksburgh and South Fredericksburgh. In the establishment of the municipality, it preserved the ward system based on the historic geographic boundaries of the previous municipalities.

The demographics of the municipality: There's a total population of just under 15,000 people. Of that, there are 13,645 electors; 55% of those electors live within 1.3% of the municipal area; 7,100 of those electors live within what's called the Napanee water and sewer area. The Napanee water and sewer area consists of the former town of Napanee plus portions of Richmond township and the township of North Fredericksburgh. I have shown on the fact sheet the distribution of total electors between the wards.

If you look at the map that is here, we've tried to illustrate the locations of the various former municipalities. I think the four townships are clear. There is then an enlargement area, and that enlargement area shows the geographic boundaries of the former town of Napanee. Then you can see the portions of North Fredericksburgh and Richmond townships that surround it. I can point out that on this enlarged area, in addition to the former town of Napanee, there are concentrations of electors in the southeast and southwest corners of this map adjacent to the town of Greater Napanee and also to the north in the town of Richmond. Not all of what might be called urban people live within the former town of Napanee; there are significant concentrations of them in the township of North Fredericksburgh and Richmond township as well.

The current council consists of seven members, as I indicated, with the mayor and the deputy reeve who are elected at large and five ward councillors. That situation has existed since January 1, 1998.

Let me turn now to the reasons that council is asking the Legislature to enact this private bill. The first is, there is a perception or a view in the municipality that the

concept of weighted voting at a local municipality in Ontario is an aberration. Historically, there has never been weighted voting in Ontario for local municipalities, certainly not in recent memory. It is an arrangement that exists at the county level, but the Municipal Act contains no authority for there to be weighted voting at the local municipal level.

The concept of weighted voting at a local municipality was introduced through the regulations that gave the minister the powers to implement restructuring proposals. It allowed the minister to implement provisions for weighted voting. It's not clear why that power was given to the minister. Indeed, it may have been put in there simply to address the situation in Napanee. This municipality is not aware of any other local municipalities in Ontario that have weighted voting. You might also be interested to know that there is no authority in the Municipal Act even to this day for local municipalities to create a weighted voting arrangement or to dissolve a weighted voting arrangement. So Napanee finds itself in the position of having a minister's order that creates a weighted voting and it is the municipality's position, based on legal advice, that the only way to change that is through a private act, hence the application for Bill Pr22.

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The second reason council is making this request is a perception at council that the weighted voting arrangement is an inherently unfair and inappropriate arrangement for this municipality for several reasons. First of all, it will create a council consisting of seven members but 10 votes. As elected representatives, I'm sure you appreciate that when you have an even number of votes, the probability for motions and bylaws being lost on the basis of tied votes, goes up. That is a first concern.

More importantly, the concept of weighted voting creates two classes of councillors. You have those with one vote and you have those with two votes. Rather than a traditional one-person, one-vote arrangement, you have councillors and, if I might, supercouncillors or special councillors. It's the view of this municipal council that that arrangement in a situation where they are trying to bring together five former municipalities, all with their own history and all with their own sense of community, and create a new community, to preserve an arrangement, that is, weighted voting, where you have different classes of councillors, is divisive and contrary to the attempt to create that sense of one municipality. In essence, it perpetuates an us-and-them sense or mentality in this new community.

It also is perceived to be an inequitable arrangement. Under the weighted voting, you would have three councillors, who are elected in wards where there are more than 2,500 electors, having two votes and you would have the mayor and the deputy reeve, who are elected by all 14,000 electors, having one vote. You have three people elected by three wards having six out of 10 votes and you have the chief executive officer of the municipality and the deputy only having one vote. The

perception of inequality and inequity is considered, in part, to be one of the reasons to change this arrangement.

The third reason the council has made this request is that the current one-person, one-vote arrangement that has existed since amalgamation on January 1, 1998, has worked well. The best example, in council's view, of why it has worked well has been in how they have dealt with the very difficult issue of tax policy in this new municipality.

In the first year of their mandate they established a single-rate tax policy. Irrespective of the level of services that were being received across the municipality, all areas of the municipality received the same tax rate. That arrangement, upon reflection, was considered to be unfair, in part because portions of the municipality were not receiving the same level of service.

In the second year of their mandate they changed their tax policy and developed a discounted tax rate arrangement for all of the wards except the former town of Napanee. The pendulum had started at one end and now swung out in the other direction, and that arrangement was considered to be unfair to the residents of the former town of Napanee because they had a different tax rate.

Council reflected on that, and in the third year, this past year, they have again changed their tax policy. Rather than establishing policy on the basis of the wards, they have moved to a tax policy that establishes a rate for those properties that are serviced by water and sewer, and tax rates for those properties that are not serviced.

If you look at the map that I gave you, the effect is that the former town of Napanee and significant portions of the electorate in both the township of Richmond and the North Fredericksburgh ward are now being taxed at a rate that is consistent with the service levels. The portions of the remainder of the municipalities that are not being serviced are at a different rate. That, council believes, is the most equitable arrangement for this municipality and, more importantly, is an illustration of why the current arrangement of voting has worked well.

The suggestion that there will be gang-ups, rural against urban, one area of the municipality acting against the interests of another municipality, simply hasn't been borne out by experience in the last three years.

Council, in the course of their mandate, also looked at the other options. They considered the elimination of wards. They considered the redrawing of the wards to rebalance the number of electorates. They looked at allowing the weighted voting to go forward, and of course they've looked at the issue of the status quo. I can tell you they looked at this all in the context of public meetings and public consultation.

With respect to eliminating the wards or redrawing the wards to achieve a more equitable balance, there was a very real concern about whether council even had the authority to do that. Historically, councils have had the authority under the Municipal Act to change their wards or eliminate their wards, but there was real concern that, the wards having been established by minister's order, they didn't have the legal authority to change the

minister's order based on the traditional powers in the Municipal Act, and they received legal advice to that effect. It would appear that legal advice was to some extent justified, because your Legislature, through Bill 25 that was proclaimed in late December 1999—this was the legislation that dealt principally with the restructuring in the Ottawa area—also included amendments to the Municipal Act that specifically made clear that, notwithstanding the provisions of a minister's restructuring order, municipalities still had the power to change their wards if they wanted to. So the legal uncertainty that was there didn't get clarified until almost Christmas 1999.

The question is then, why didn't council go forward with this established power and rejig the wards to make a more equitable distribution? They could have, but they couldn't have done it until early 2000 and the Municipal Act makes clear that if you rejig your wards in an election year, it doesn't take effect until the following election. If they had rejigged the wards in 2000, it wouldn't have been effective until 2003, so they continued on with the decision they had made in the fall of 1999 to ask for a change to the awaited voting arrangement.

They also considered allowing the weighted voting to go forward, as contained in the minister's order, and for many of the reasons that I've articulated, they did not favour that approach. They also felt the municipality had undergone a lot of change in the last three years, as I'm sure many of you understand municipalities have gone through, and they felt to now go forward with a further change would be disruptive and unnecessary. Basically in a benefits-and-risks or a benefits-and-complications equation, council decided preserving the status quo was the preferred option.

One other option undoubtedly they could have considered, I suppose, is creating two councillors in those wards that had larger populations, but clearly that's contrary to the policy of the government to reduce the number of politicians. Going up to nine councillors would have been a retrograde step.

You will read in the submissions that have been made to you, and I assume you will hear in the oral submissions made to you, certain reasons for opposing the bill, and I would like to address some of those.

The first is that you will hear that this weighted voting was the product of a negotiated arrangement. Let me say that is indeed correct. It came about as a process by which the politicians in the county of Lennox and Addington in 1997, under considerable pressure from the government to restructure and downsize themselves, went through a series of intensive meetings over a very short period of time where essentially they dealt with everything from soup to nuts in terms of the restructuring of their 13 municipalities down to four. One of the issues they dealt with was council representation in the town of Greater Napanee, and out of that process came the idea of weighted voting.

It is agreed that the weighted voting is the product of a negotiated arrangement, but the question is, was it a good

arrangement and was it the best arrangement? It's the position of the current council of the town of Greater Napanee that it is neither. Having the benefit now of three years of reflection and three years of experience, they have concluded that to move forward with a concept that was hashed out in an intensive negotiation session back in 1997 is not in the best interests of the municipality, and it's for that reason they are asking that the private bill go forward.

1050

You will also hear that this weighted voting arrangement protects against gang-ups of urban versus rural, rural against urban and so on. My submission to you is that has not been the experience over the past three years. I draw you back to how council dealt with probably the most difficult issue councils deal with, and that is the question of tax policy.

The situation might be different if we were talking about a majority of wards that were under 2,500; in other words, if you had five wards under 2,500 and two or three wards with more than 2,500. But the situation you have here is, you already have three out of the five wards with more than 2,500. The majority of the wards already with the larger population control the majority, and if you consider that the mayor and the deputy reeve are elected at large, then presumably the bulk of their constituency comes from the three wards that have the largest populations.

The suggestion that going to weighted voting is necessary to prevent gang-ups, I would submit to you, if anything, it will simply increase the strength of the majority of larger wards over the smaller wards.

Lastly, you will hear that the current arrangement where you have wards with considerable inequality in the number of constituents that they represent is contrary to the principle of representation by population. It's certainly acknowledged that there is an inequality in the number of votes, and I think you can understand how that came about. Indeed, it may be preferable in the fullness of time to either eliminate the wards or rejig the wards so there is an equal distribution of numbers, and I'd submit to you that, option still remains open to future councils.

But if the objective here is to try and redress this perception of imbalance on the representation by population argument, I would submit to you that moving to weighted voting moves you further away from that objective rather than closer to that objective. The reason for that is that if you go forward with weighted voting, you create a situation where you have given councillors special status. People being people and politics being politics, I would submit to you that once you have given representatives from a particular area of the municipality additional powers, it will take a very big-minded person to support a rejigging that will, in essence, bring them back where they have the same level of power as others.

My submission to you is that to go from a situation where three out of five already with the largest per cent of the population control the majority to a situation where those three out of five will now have six out of 10 will

move you further away from the ultimate objective of equal representation by population rather than closing the gap.

In summary, it is the position of the council of the town of Greater Napanee that the concept of weighted voting, while it probably seemed like a good idea back in the heat of the moment of 1997, council, with its experience, has determined it is not in the best interests of the municipality. It is an aberration, and their concern is that it will not be conducive to the concept of establishing and creating one municipality where previously there were five. On behalf of the municipality, I would request that the committee support Bill Pr22 in its motion to or its route to the Legislature.

I might also point out that Mr Callery is here and can answer questions as well. Thank you for your consideration.

The Chair: Thank you, Mr Wilkin. Mr Callery, did you have any remarks you wanted to make at this time?

Mr Raymond Callery: Not at this time, unless there's any questions.

The Chair: Thank you. We'll move to interested parties. Mr Gonsalves, you had a presentation you would like to make to the committee.

Mr Andrew Gonsalves: I trust you have a handout that I gave, which I'm going to read from and probably make some supplementary remarks as I go along, if that's appropriate.

The purpose of this presentation: The Rural Ratepayers Association of the Town of Greater Napanee—we call ourselves the RRA—is here today to support the application of the town of Greater Napanee to amend the minister's order that created the new town. The amendment is to repeal section 4.3(b)(ii), which provides for weighted voting on council after the 2000 municipal elections. This action effects a unanimous motion of the executive of the association.

About the RRA: It was formed in 1998 and is a grassroots organization open to all ratepayers of wards 1, 2, 3 and 4, which we call the rural wards. Its purpose is to further and protect the best interests of rural ratepayers of the town of Greater Napanee. We have a membership of 1,200.

Governance of the association: We have an executive of 12, comprising a president, a vice-president for membership, secretary-treasurer and eight executive members, preferably two from each of the four rural wards, and a past president.

Voting: Each member of the executive has one vote, with the exception of the past president position, which is non-voting.

Background: The RRA was formed when it became clear that the council of the new amalgamated town was going to set one tax rate for municipal services across Greater Napanee. This would have the effect of higher taxes in the rural areas. Taxpayers in urban Napanee would see their taxes reduced, even though the level of services they receive is much higher than the rural wards. We see this as grossly unfair.

One tax rate was set in 1998 and over \$900,000 or 28.5% of the total tax levy of \$3,152,000 of the municipal portion of property taxes was shifted from urban Napanee to the four rural wards. Services provided by Greater Napanee remained more or less the same as prior to amalgamation. Taxpayers in the former townships of Richmond, North Fredericksburgh, South Fredericksburgh and Adolphustown saw their taxes—the municipal portion—increased by 19.03%, 50.76%, 626.8% and 158.8% respectively. Taxpayers in the former town of Napanee received a hefty reduction of 44.93%.

Since its formation in 1998, the RRA has worked very hard to bring fairness to the rural taxpayers. In 1999, by a vote of four to three, some relief was achieved when a two-rate policy was adopted by council. This saw approximately \$200,000 returned to rural taxpayers. In 2000, a three-rate policy was set on May 8 last. The effects of this new policy are currently being reviewed by the association.

The RRA has solicited the help of the Premier of Ontario, the Minister of Finance and the Minister of Municipal Affairs and Housing in its efforts to resolve these issues. As of today, we have outstanding correspondence with the Minister of Municipal Affairs and Housing on other issues affecting the minister's order vis-à-vis the proposal sent up from the county of Lennox and Addington.

Our submission: The RRA considers the weighted voting system, as set out in section 4.3(b)(ii) of the minister's order, dated January 7, 1997, as flawed and not in the best interests of the residents of Greater Napanee. We respectfully petition the Legislature to repeal section 4.3(b)(ii) for the following reasons:

(1) Councillors elected in wards with greater than 2,500 electors will have two votes on council after the November 2000 election. The mayor and deputy mayor, who run at large, are elected by over 13,200 electors and represent all taxpayers, will have only one vote. This is unfair and, as we see it, goes against the principle of representation by population anyway. We understand that this principle is being put forward to support weighted voting by those who wish to have this bill defeated. We find it difficult to support this principle when the number of electors in each of the five wards is so small. Who is to say whether 500, 2,500, 3,500 or any other number is fair in these circumstances?

(2) Greater Napanee council resolution 348/99 to have the weighted vote provision eliminated was carried by a clear majority—we understand five to two—of the duly elected council of Greater Napanee. This council represents all taxpayers and includes at least three representatives and two alternates who participated in the amalgamation process. So for the original negotiation that came up with the voting, we have about five people on the current council. Four of these individuals now understand that the weighted voting system, if not eliminated, will create two classes of representations at council after the next election. This could potentially

mean the disadvantage of those taxpayers represented by councillors with only one vote. They voted to have weighted voting eliminated. We see this as clear second thoughts of these individuals on weighted voting.

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(3) Further, as he tells it, it was the then reeve of the former Richmond township, who is now the deputy reeve of Greater Napanee, who was the most vocal during the amalgamation negotiations about having weighted voting. At that time he was trying to protect the assets of his municipality in those negotiations. However, now that we are all one municipality and most assets are protected under sections 8.3 and 8.4 of the minister's order, he sees no necessity for weighted voting. He voted, on Greater Napanee council resolution 348/99, to have section 4.3(b)(ii) repealed. We support his stand.

(4) Weighted voting, as currently allowed under the minister's order, means a cumulative total of 10 votes. This could potentially result in numerous tied and lost votes which would frustrate the operations of council. For example, if the four-to-three motion that carried the 1999 two-rate tax policy, which I alluded to earlier, was taken under this weighted vote system, it would have resulted in a five to five tie and failed. Taken to the next level, we feel it is reasonable to assume that any other tax policy option tabled at that time would have had the same result. Given those circumstances, final tax bills would have been delayed, resulting in cash flow problems which could have adversely affected the town's ability to provide services to its residents.

(5) There are a number of divisions between the five amalgamated municipalities that form the new town of Greater Napanee which we feel are as yet unresolved. One of the more serious ones is the taxing policy. The weighted voting provision under 4.3(b)(ii), if not repealed, will create some super councillors after the next election. We believe that this will only serve to exacerbate the current divisions within the community and add one more to the list.

(6) The new town of Greater Napanee is an amalgamation of five separate and unique former municipalities. Having some councillors with two votes, and others, including the mayor and deputy who are elected by all the people, with only one vote will potentially create feelings of superiority in some and inferiority in others. This situation will not support the kind of environment that fosters co-operation and teamwork which is sorely required to take the newly formed municipality forward in the new millennium.

(7) As we understand it, the Town of Greater Napanee is the only lower-tier municipality in Ontario with weighted voting. Structured as it currently is in the minister's order, three of the seven councillors will have six of the total of 10 votes. The other four will have four votes. This means that a minority of councillors prevails over the majority. A minority of councillors controls the council. We see this as undemocratic and not in the best interests of all the taxpayers of Greater Napanee.

Respectfully submitted.

I'm now open to any questions the committee may have.

The Chair: Thank you very much, Mr Gonsalves. I'm going to move now to Mr Lucas and invite you to participate. Would you like to make a presentation?

Mr Lucas: Yes, I would, thanks very much, and if possible, I'd like to offer some rebuttal to the two previous presentations as well.

Hopefully the members of the committee received my letter of February 21, and if I may I will quickly re-present that.

"To whom to may concern,

"I am writing you in regards to Greater Napanee's municipal council's request to amend the Ministry of Municipal Affairs order dated January 1, 1997, under section 25.2 of the Municipal Act which implemented a restructuring order for the county of Lennox and Addington. Specifically an amendment which would repeal section 4.3(b)(ii) which states a weighted vote policy for wards within the municipality as of the year 2001 elected council.

"I am a past member of the Napanee town council, past director of the Napanee Chamber of Commerce, present chairperson of the Napanee Business Improvement Association, a business operator within ward 5 (old town of Napanee), residential property owner in ward 4. My family and I own property in the majority of wards within Greater Napanee within a majority of property tax categories.

"I am firmly opposed to this amendment request by the town of Greater Napanee for the following reasons," in no particular order:

"(1) One vote, one ward does not fairly represent the population or the taxation of some wards, ie South Fredericksburgh," with approximately 900 residents "versus Napanee ward" with approximately 5000 residents.

"(2) This amendment would change the 'rules of the game' that the five wards agreed to in 1997 for two or three municipal terms. The present deal was agreed to in good faith by the elected officials of the day who some were incidentally elected for this current term of council as well.

"(3) The vote on the resolution for an amendment itself doesn't fairly represent the true population or taxation representation of the larger wards, especially Napanee and Richmond township.

"(4) We have already experienced resolutions voted on by the majority of a council that have placed tax burdens on some wards by others. Specifically the area rating of police services onto ward 5 (Napanee) by the so-called rural wards at a cost of approximately \$340,000 to ward 5.

"(5) A main supporter of this amendment is the Greater Napanee Rural Ratepayers Association who only represent 'paid-up' members in good standing of rural residential properties (outside ward 5 'old Napanee'). Their membership fluctuates year to year. As well, they do not represent any other tax categories within their

ward or multi-ward, multi-tax category rural ratepayers who may not support their cause.”

“(6) Personally, after seeing the one vote, one ward policy in action for this term, it is probably the last option that I would consider for our future councils. If the present members of our council (who may not even be our elected officials in the future) do not like the weighted vote policy, perhaps we should consider a more appropriate representation policy, specifically no wards but” candidates elected at large.

“As a member of the Napanee town council from 1989-94, we had amalgamation discussions with Richmond township and North Fredericksburgh each and every year. This is not a new issue, but unbalanced representation (one vote, one ward) was never an option” that I was ever aware of or would have even considered at that time as well.

“If you accept this amendment, you will never have equitable representation based on population and/or taxation. As a matter of fact, the present wards are in conflict with each other now within our own municipality. The ‘rural wards’ being presented to you are not true rural wards made up of agricultural and rural residential stakeholders. The majority of the ‘rural wards’ have significant industrial tax category partners and two ‘rural wards,’ Richmond and North Fredericksburgh, have large urban residential tax category partners and water and sewer services partners, which also includes South Fredericksburgh.

“I respectfully request your standing committee reject this amendment proposal and direct Greater Napanee to fulfill its next municipal election representation policy, weighted voting, or accept a proposal for an open election of” representative councillors at large and eliminate the wards completely.

I would be happy to speak with your committee members in person if required.

The Chair: Thank you, Mr Lucas. There may be some questions for you as we proceed so I hope you’ll stay on the line.

Mr Lucas: Yes.

The Chair: I’m going to move now to Mr Coburn, parliamentary assistant, to ask if the government has any comments on this bill.

Mr Coburn: After reviewing this, the government has no objection to the bill, and in fact our position has always been to provide democratic decision-making at the local level, and through recent amendments such as in Bill 25 and Bill 62, which is now being debated, the goal is to provide a wider range of decision-making capability at the local level.

I would like to point out that council had an opportunity, as pointed out by the legal counsel of Napanee, to look at the issue of ward boundaries and had an opportunity to do that by December 31, 1999. They chose not to and as a result the bill is coming forward. If there are recommendations or suggestions that the ministry would have, it would be based more on the principle of one representative, one vote. Possibly a look at re-

distribution of ward boundaries by the new council would be something they may want to visit if they’re looking at making a decision in terms of fair representation.

1110

The Chair: We’ll move to questions. Actually, if I may begin, Mr Wilkin, you may have answered this but I was a bit perplexed—let me display my bias upfront. I carried forward a private member’s bill in the Legislature to grant an additional councillor’s position for the ward of East York in the new amalgamated city of Toronto, based on the principle of representation by population. I believe very strongly in that. I also am not a fan of weighted votes. I think it should be done by ward boundary representation or by the number of councillors within ward boundaries, whichever structure is appropriate for that municipality.

I was confused when you indicated that the council didn’t pursue ward boundary changes because they felt there was a legal impediment to that in the ministerial order, yet what you’re here today to seek on behalf of the council is an amendment to a ministerial order, and that could have been done with respect to ward boundaries. You made a reference a bit later that perhaps the reason for that was, with all of the turmoil through amalgamation, not wanting to have greater disruption. I wasn’t sure if you were relating that to the argument not to pursue the ward boundaries. I was wondering if you could clarify that for me.

Mr Wilkin: There were two issues in there. The first was that even if council had wanted to pursue rejigging the wards in 1999, there was a real concern that they didn’t have the authority to do it. The reason was that even though the Municipal Act gives councils generally the authority to either eliminate their wards or rejig their wards, because their ward structure had been established by a minister’s order and certain language in the act that dealt with minister’s orders, there was a real question that if you are established by a minister’s order, does it effectively preclude you from changing anything in the minister’s order.

The Chair: I understood that part, but if that had been the preferred option, the same request you’re making here today to amend a ministerial order, you could have been coming forward to request that the ministerial order be amended with respect to ward boundaries. The question I’m asking is, why did the council decide to ask to have the weighted voting amended, as opposed to having the minister’s order or direction with respect to ward boundaries amended?

Mr Wilkin: May I defer to Mr Callery?

The Chair: Absolutely.

Mr Callery: During the discussions a number of options were brought forward to council, including the elimination of ward boundaries completely. The host of options was all considered. Council’s consideration at the time as to why they chose to go this route was that this route better represented a status quo situation as far as

keeping as many things constant as we possibly could at that point in time.

What we've heard is that there have been a number of very controversial issues that have come up before this council, as could be expected with any newly amalgamated council. A lot of those issues dealt with things such as taxation. They've managed to work through those processes, and as we've heard from Mr Wilkin, there was a bit of a pendulum swing between the different years of this term of council, but they've managed to try and balance those issues.

They felt with the number of changes that people have seen—removal or change of where their municipal office used to be; the loss, somewhat, of what they felt was a municipal identity; the issues around: "Where are my services being provided from? What services am I getting as to what I used to get? Where does my tax bill go? How does this happen? How does that happen?"—there have been a number of upheavals in people's lives over the last three years.

Council felt that with this election we're already going through a change in the fact that we're going to an optical scan type of election. There were other election issues as well. Nothing here is happening in isolation, unfortunately. With all the changes that people have seen over the last three years, and are going to continue to see, council felt, "Let's try and keep something constant in this storm."

The constant they felt, and the best route we could follow through on, was to try and—the weighted voting system wasn't the right answer for this municipality is what council deemed. So the best thing to do was wait out the change. With the authorities that are coming down through the passing of Bill 25, if future councils want to try and look at how to solve the issue for the long term, they have the tools to do that now, but they felt the best thing to do at this point in time was to try and weather the storm and keep some continuity.

The Chair: Mr Lucas, do you have any comments on that?

Mr Lucas: Yes, I do. In general, with Mr Wilkin and Ray, everything that's stated is a matter of perception. All is not well. To suggest that future councils will make changes as required—the future is now. The representatives in 1997 concluded that the first two terms of council would follow this train of thought and this amalgamation with the whole purpose that in one, two or three councils we wouldn't be wards; we would be one municipality. Every person in the municipality is distinct, but this entrenches something that is fairly inconsistent with representation and it prolongs something that was decided in 1997 to happen for this term. So, nothing personal, but everything commented here is perception. It's not reflective of the council as a whole. There was not a unanimous vote for this. The delaying of something that's inevitable to make us one municipality as opposed to four or five is a point that should be made and carried through on that obligation.

Mr Clark: Mr Callery, is it the intention of the town council to look at redivision of ward boundaries, not in the election in November but before the next election in 2003?

Mr Callery: In this term of council, to be fair to the elected officials who are around the table, the conversations that took place around this issue were that when they looked at the options that were available to them, I think they felt that for this particular term, going into this next election, the status quo was the best opportunity.

Although there has been a large amount of discussion and certainly there's a large amount of discussion within the municipality as to whether it is better to redistribute the wards or remove the ward system completely and go to elections at large, that's certainly something that very well could become an election issue on which people may want to question the councillors as they run on their platforms, as they form those for the new election. But I don't think this council has tried to predetermine or tie the hands of the future elected councillors as they may come in after November. I think at this point they are willing to leave the decision as to how to best run the following election with the next council. They would assume that if it is a highly contested topic within the community itself, that will be brought forward either during people's platforms or during the conversations that come out over the next few years.

I really don't think that this council has tried to predetermine that decision. At this point in time they are just taking the direction that they have to deal with the matter at hand right now, which is how this is going to be handled.

Mr Clark: What type of public consultation was there with regard to the amendment you're presenting today?

Mr Callery: As far as the amendment goes, there was initial information that was gathered. Basically, as staff, we were approached to get legal interpretations on what was available, what were the options available before us, and that was brought before council. After council had an opportunity to take a look at what the legal options were, there were two following meetings. Those meetings are regular meetings that are held. We have a property committee, which is all of council, that meets the second Monday and then again the fourth Monday, and the council minutes come up.

So that was discussed at that point in time. There were two open meetings that the public were able to attend and give input on those. Then there was a follow-up that was held by the actual councillor for ward 5. After the decision was made, we then had another follow-up meeting to that, just to make sure the constituents in ward 5 understood that. There was some controversy that was discussed at that particular time. That's basically the process we went through. There were two open public meetings where it was discussed.

Mr Clark: These were council meetings?

Mr Callery: Council meetings where it was decided that this was the best direction for the municipality to go at this time. After that, there was some follow-up dis-

cussion just so that the ward 5 councillor could make sure that her constituents clearly understood the issues, how that was decided, and how that came out.

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Mr Clark: So there wasn't a formalized consultation process to reach out to the public to get as much input as possible?

Mr Callery: Through those meetings, yes, there was.

Mr Clark: Through the council meetings?

Mr Callery: It came up at a property meeting and then it came up again at council meetings and through—

Mr Clark: But those are standard meetings?

Mr Callery: Those are the standard meetings.

Mr Clark: So there was not a special meeting called with advertising, inviting the constituents out to talk about this specific issue?

Mr Callery: Not a specific advertisement for this particular issue. It was held during the general meetings, although there was press coverage after the first meeting and before the second meeting was held to make the decision.

Mr Clark: Just two more questions, if I may. I agree with the Chair. Weighted votes are not my cup of tea and never have been, so I guess I agree in principle in terms of what you're doing. I have some concerns that there was not the consultation that I would have liked to have seen. I'm a firm believer in wide public consultation.

In listening to Mr Lucas—and I'm assuming that he's still with us?

Mr Lucas: Yes, I am.

Mr Clark: He made a statement which interested me. I'm going to read it: "If you accept this amendment, you will never have equitable representation based on population and/or taxation." Why is it, Mr Lucas, that you believe that?

Mr Lucas: I don't feel that a ward within a municipality that has approximately 55% of the population and/or 50% of the tax base should be on equal footing with a ward that only has 900. I want to give you an example. Nobody's talking about the concessions that the larger municipalities made to the smaller ones in the first term of this new municipality. When South Fredericksburgh and Adolphustown came in, they were given equal status to the larger wards, which was one vote, one ward, which I think is a concession that hasn't been talked about, hasn't been duly noted. I really think it's unfair that taxation policies and budgets could be implemented against wards that (a) didn't vote for it, and (b) have a larger representation than the other ones.

I feel really bad that there might be situations where a vote has cast an obligation on to one ward versus another against their will, but that works both ways. There are inequities, and if you look at the wards prior to the amalgamation, for example—and if I can be brief here—old Napanee had services provided to the surrounding wards that were never equitably costed out. For example, we have an arena in Napanee that is located in Richmond township. The old town of Napanee for years has paid a subsidy on the arena—and I'm a hockey guy—for the

benefit of the other wards. I know for a fact that when I was on council the majority of kids who used that arena actually lived in North Fredericksburgh. Napanee picked up a tab of about a "\$200,000 a year deficit" for a facility that wasn't even in their own municipality and was being used by other wards at their benefit.

The other one is—as Mr Coburn, the former mayor of a community will know—because of historical policy adopted by the province of Ontario, because the town of Napanee was a town and not a township, we've paid for policing for 125 or 150 years. If we were the township of Napanee, we would never have paid for policing at all. So, in fact, your taxpayers in Napanee ward have paid two taxes, a provincial tax for policing in general, and a civic tax for policing. This seems to be one issue that is really a sore point and that I feel has been unduly assessed against Napanee. How do you change the historical fact of paying for policing in a ward that in effect is 850 acres which, that for historical accounting purposes, has only been kept track of because it has to? There's no police records of the surrounding townships because there was never a need to keep a record of them. Now we've had to balance it out to say who pays what for policing? Well, for the first time, and I think it's long overdue, everyone who requires policing should pay for it.

There seems to be an inherent bias or problem with determining how much Napanee ward should pay for and the other municipalities not pay for. I'll tell you, any of those people in those rural wards who need the service will expect the service there, just like fire, ambulance or any other special services.

Another major component was, for example, building services. For years the township of North Fredericksburgh used the building department of Napanee on a per call basis while the municipality of Napanee paid for the overhead and everything else.

The last thing is—and I want to make this very clear—it's only because of historical boundaries that you have five wards now. One hundred and some years ago, Napanee was sectioned off of Richmond township and is, in fact, an 850-acre parcel that hasn't changed for over 100 years. While it is time to change it and it is time for fair and equitable taxation, I'm in a position, unfortunately, that it doesn't matter where I live or what I own, I pay taxes for the whole municipality. I want my properties fairly treated based on the services they provide and the tax that they pay. In 1999, when the two tax policies came in, you had buildings on opposites sides of the street, commercial properties, paying different taxes for policing services that, in fact, were not getting different services. So there are two sides to the coin.

I'm a supporter of the community as a whole, as are many rural ratepayers who haven't come forward to you today, and I just want to see the town remain on the course that they picked in 1997 for the eventual blending of one municipality. We've got a great municipality, we've got great people and we want to see us move

ahead as a whole. It is perception, and those are my opinions.

Mr Clark: Thank you, Mr Lucas.

Mr Clark: Madam Chair, if I may, to Mr Coburn. In the Ontario Municipal Act, if I recall, there is a section or a clause that states: "150 electors may petition a municipality to redivide their ward boundaries. If the municipality does not respond within 30 days, then any one of those electors may go to the Ontario Municipal Board to request the redivision of ward boundaries." Does that still stand in the Ontario Municipal Act?

Mr Coburn: Yes.

Mr Clark: Yes, it does. So in this case, if Mr Lucas is concerned that the town council is not going to do, in his opinion, what is right and redivide ward boundaries, he can do a petition of 150 legitimate electors and force the issue? Yes?

Mr Coburn: It has to go to council, yes—

Mr Clark: It goes to council and they have 30 days to respond. Is that correct?

Mr Coburn: Then the council has 30 days to respond.

Mr Clark: If they don't respond within 30 days, any of the electors who signed the petition may petition the Ontario Municipal Board?

Mr Coburn: That's correct.

Mr Clark: Thank you, Madam Chair.

The Chair: Could I just ask for clarification on that? If they respond and the electors are unhappy with that response, do they have the right of appeal to the Ontario Municipal Board?

Mr Clark: I believe they do.

Mr Coburn: If they don't pass it in accordance with the petition, they have the right to appeal to the OMB.

The Chair: That's what I thought it was. Thank you very much.

Any further questions?

Mr Pat Hoy (Chatham-Kent Essex): You've answered other similar questions on why you didn't consider wards and, as well, public meetings. You did say the original plan for weighted votes was a negotiated settlement. I'm from Chatham-Kent and we had a commissioner restructure the area quite dramatically. It's my understanding that there was a chance, an opportunity to revisit that imposed restructuring at a later date. Did you have anything within the minister's order to revisit any aspect of what happened in your community? There wasn't that chance?

Mr Wilkin: Under what circumstances, sir? Do you mean in terms of the municipality?

Mr Hoy: Yes.

Mr Wilkin: There's nothing in the order that allows the municipality to seek amendment. In fact, I think this was one of the flaws with the original restructuring legislation. It didn't even address the issue of how you amend these orders. The order was challenged in court, actually, by one of the municipalities on the whole issue of being forced into restructuring but that challenge was—

Mr Hoy: For example, there was no opportunity to look at ward boundaries later, after a period of time, for instance, five years?

Mr Wilkin: There was nothing explicitly in the order that said you can revisit this issue of ward boundaries.

Mr Hoy: Thank you. I find it interesting that the original order said that there would be two votes instead of one except when voting on changes to ward boundaries. It's only one exception. The council, whoever they may be or wherever they're from, would vote in all other matters with weighted voting except for this one instance. Has it ever been explained to you why the minister felt that there should be this one exception and one only?

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Mr Wilkin: I'm not sure it was a decision of the minister. I think it was probably a provision that was in the proposal that came forward as a result of the negotiated exercise, but the reason behind it, I certainly don't know. Do you know, Mr Callery?

Mr Callery: I should probably just go back a little bit for the committee. You have to understand that when this was a negotiated settlement, it was a negotiation that took place over a period of about 14 days, with 27 elected officials and about six staff members locked in a room until about 3 in the morning.

When this was done, going back through my notes, at one point in time the proposal that would have come forward from the county would have read slightly differently from what was actually passed by the minister and put into an order. I'm not sure exactly where the translation changed, and I was never able to really obtain that. But at one point in time it stated that in the first term everyone would have one vote, and then in the second term, which we are about to enter into, the weighted voting system would come into effect, based on what you've seen. Then in the third term, council would have an opportunity to review that. When the minister's order was passed, and subsequently when the proposal went in, the way it read was that the first and second parts of it were in there and the third part never was.

I guess what concerns council to some extent is that with no section in the Municipal Act dealing with this—and obviously the initial intent was never to allow lower-tier municipalities to have this authority—even if we wanted to change the boundaries in the future and we have that authority, we're still stuck with the fact that we can never get rid of a weighted voting system, because there is no authority for us to change that without going through this legislation and going through this process.

If we go through the process of changing the way our wards look, what we in essence could end up with when you design it and lay it out, is that it is potentially possible to have a five-ward system in our community, every one with more than 2,500 voters. But then what you end up creating is a ward system whereby five elected councillors have two votes each, and a mayor and deputy reeve elected at large have one vote each still, because we're still entrenched in the way that order reads.

Even if we're going to correct this in the future—we come before the standing committee and the Legislature now asking for this change or we come later, saying that we've adjusted our ward boundaries—we still require this change from the Legislature. We certainly require this bill to be seriously considered and passed so that we can move on.

Mr Hoy: In your earlier comments you mentioned that reducing the number of council members was a government ideal, and I would agree to that. It was a government ideal to reduce the number of councillors in your community and elsewhere, and the government took certain initiatives to see that it would happen.

I'm actually kind of surprised that the government isn't introducing this bill themselves rather than going through a private bill. They charge on with certain ideals they have on how municipalities should operate. It's encouraging that you have this opportunity to come in with a private bill, but at the same time I'm surprised the government hasn't recognized the situation that your council currently is undertaking and brought forward their own bill to rectify this, when it is stated that they have no objection to it. It's curious to me that they wouldn't do it themselves as a government.

The Chair: Mr Hoy, is that a question or a comment at this point? We will have an opportunity to debate as well.

Mr Hoy: I'm just glad that you have this venue and this opportunity to put forth what some of the people in your community, at least, believe. I have no further questions.

Mr Gill: I have a couple of comments and a question perhaps. It does seem unfair that somebody elected from ward 1 with 864 electors versus ward 5 with 4,800 electors has the same powers. But I know I've heard from members who are perhaps more experienced in that sense that two wards per se are not acceptable.

My concern is that council should have seriously looked at redrawing the boundaries. I think we all seem to be saying that. I don't think that option was exercised. The second option would be the election at large. It's not such a number of electors in total, overall 13,000. I'm sure the people in the community who are actually running for these seats are known to the total population, and therefore an option should be looked at whether they should be members running at large. That way there is equity between the mayor and the council members.

One of the options I'm looking at is a novel idea—I don't know if it's even legally possible; I don't know if the option is there—to let the council go back and look at redrawing the boundaries and delay section 4.3(b)(ii) to come into effect later on, perhaps three years from now, so that we still keep on the books that option of having two voting powers, but that gives you time and incentive to look at redrawing the boundaries and making it more equitable.

The Chair: Mr Gill, could I just understand what you're attempting to do. You're attempting to have the

minister's order remain in effect for perhaps three years, at which point it would be revoked, as opposed to—

Mr Gill: I'm saying we revisit that in light of maybe their having by then looked at the boundaries and—

The Chair: So the effect of what you're suggesting would be simply to defeat the bill. I'm just looking at it legally. I wasn't sure if you were trying to move an amendment. What you're proposing is that perhaps this is an issue that should come back to this committee at such time as they've addressed the issue of ward boundaries? I think Mr Callery was saying that they would need this done anyway at some point in time.

Mr Gill: Yes, I agree with that.

The Chair: You're saying it's a question of timing?

Mr Gill: Correct.

The Chair: Did you want to respond to Mr Gill?

Mr Callery: There are a couple of concerns I have with the proposal. I just want to make sure I understand exactly what you're proposing. The proposal is to somehow delay the weighted voting coming in November but coming in three years from now, is that—

Mr Gill: That's what I'm looking at, if that's an option, the status quo for three years.

The Chair: People would continue to have one vote per ward for three years, so that the weighted voting option would not begin—

Mr Gill: It does not kick in for three years, to give them time to look at that option. I don't know if it's possible.

Mr Callery: If that actually occurred, and council having gone through another process to look at boundaries within itself, if they still decided to keep any form at all of elections by ward, and even if they did that to have better representation by population, to go down that road and address that we would still, under the wording—and let my solicitor correct me if I'm wrong here—end up three years from now having a situation where my mayor and my deputy reeve, if they keep those titles, elected at large, would still only be authorized to have one vote and the councillors from each of those wards, assuming they divided it up five ways and had 2,500 in each ward, would still have two votes. In essence we'd still be left with a problem, based on just the existing wording, that even exists in the order today.

Mr Gill: That's fine. My concern is that I don't think enough due diligence has been done in terms of looking at the election at large so that everybody is equal, or redrawing the boundaries. I didn't hear that due diligence was done.

Mr Wilkin: With respect, sir, I submit that they did look at it. The Chair raised the issue of, well, if they wanted to redistribute the boundaries, why didn't they do it through a private act? But I think you heard Mr Callery indicate that what they were really seeking was as little change as possible, because of all the other change that had gone on.

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In looking at the options—and clearly that would've been one of the options to them—it would nevertheless

have been disruptive or an upheaval. People would've been going into this election with now new boundaries and new wards and who represents who, whereas the objective was really to try and soften things down, slow things down, preserve the status quo. I don't think the issue of redrawing the boundaries is off the table. I think it's just being put off until the next council when, hopefully, after getting this first term as an amalgamated municipality behind them, the sailing will get a little easier and they can come back and redress that issue.

The Chair: Mrs Dombrowsky, did you want to respond to this question?

Mrs Dombrowsky: Are we going to be wrapping up soon, do you think? I can maybe—

The Chair: One would hope so, but people have indicated they want to speak.

Mrs Dombrowsky: I maybe will wait.

The Chair: OK. Mr Clark.

Mr Clark: A quick question for the parliamentary assistant. I'm slightly confused here. My colleague has done it to me yet again. Did the minister order a ministerial regulation which set in place the weighted voting? Was it a ministerial regulation?

Mr Coburn: A ministerial order.

Mr Clark: A ministerial order. In terms of the ward boundaries, the ward boundaries are set by ministerial regulation or order?

Mr Coburn: Order.

Mr Clark: So it's the same thing. The ward boundaries could've been done by the municipal council through the normal process under the Ontario Municipal Act. They could've re-divided had they desired to do so, yes?

Mr Coburn: That's correct, by December 31.

Mr Clark: However, this portion of it, they have to come with a private bill in terms of the weighted vote to repeal that particular clause.

The Chair: Actually, if I may tag on a question to that, Mr Coburn, because I understood the discussion we had a little differently, that both the boundaries and the weighted vote were part of the ministerial order. The council had the option of pursuing a change in boundaries or a change in weighted vote by coming forward with the private bill. They could have gone either option. Because of the argument we've heard about disruption and wanting to maintain the status quo, they've chosen to bring the request forward to do away with the weighted vote, as opposed to a request forward to change the ward boundaries.

Mr Clark: So in the process, this was their decision to go down this path to where they are. Then I would humbly suggest that I will be supporting the bill as it is being presented here.

The Chair: Could I indicate at this time, we're going to have a moment for some comments and debate. I'd like to wrap up the question part. Did you have any questions that you wanted to put, Mr Coburn?

Mr Coburn: No, I have no questions.

The Chair: Are there any further questions?

Mr Gonsalves: Madam Chair, is it possible for me to make any comments at this point?

The Chair: It is. What I'm going to do is ask each of the interested parties, then the applicant, then the bill sponsor to make some wrap-up comments. In light of the time, I'm going to ask you to keep them quite brief so that the committee has appropriate time to debate the bill itself if they so wish. If I may begin, Mr Lucas, to invite you to make some brief closing remarks.

Mr Lucas: Thanks very much. Very quickly, my only comments are, as a municipality, it's certainly not to our benefit to be bickering over something that is maybe more logistical than anything else. We have a great municipality. I think the amalgamation itself has done wonders for us. By the way, we were voted one of the 10 prettiest towns in Canada by Harrowsmith magazine. Council had a lot to do with that—just kidding.

I think this is a fundamentally serious enough issue to be addressed. I'd be happy with anything other than the status quo. Electing councillors at large might be a great compromise. As Ray Callery stated very clearly, it would be easy at this time to divide the municipality up, irrespective of the present wards, into five equal parts based on representation. If you look at your map of Napanee, you'll almost see that the centre of the matrix is highways 2 and 41. I'm sure there's a compromise that could be made. If it means reorganizing the wards themselves so they don't represent the current old municipalities, that might be a nice compromise, but the other one might be just councillors at large.

It is a matter of perception. The people involved have a lot of great points. I don't want to debate the plus or the minus of either one of them. It's a tough call, but I don't think the present status is acceptable, and delaying it for another three years will fester even more. I think it would be easier to find a resolution prior to this election if everyone sat down and worked it out. I'm in support of the municipality and its council and the things they're doing, but this is a very fundamental issue. I hope we resolve it.

Mr Gonsalves: I wanted to address a couple of points that Mr Lucas made because I feel obliged to. I feel it's really off topic, but having introduced it, I feel I'm obliged to respond.

One of the issues is the business of policing. All he had to say about Napanee—if it were not this, we'd not be paying for policing etc. One of the problems my association has had with the council of Greater Napanee is that, notwithstanding the fact that the province of Ontario gives a CRF grant for the rural wards for policing, all the wards that started paying for policing, come January 1, 1998—had never paid for it before—through municipal taxes, the province of Ontario introduced regulations to make sure that those wards would only be paying a maximum of \$90 per household. That's one point.

The second point is that pre-amalgamation, the former town of Napanee was paying approximately \$660,000 for their policing for 1997—and the prior eight to 10 years,

I'm told, the same amount—under contract with the OPP. It has been clearly established, both from the government side and from my research, that in 1997 the real cost of that policing was \$1.3 million. So they were in fact being subsidized by the Ontario government for the difference between that and what they were paying.

When they struck a one-rate, we were there on June 8, 1998, without any numbers because we were new to it, telling them that if they went the route they were going they were going to shift close to \$1 million of taxes from the ward of Napanee to the four rural wards, which in fact did happen. But the point I want to make about that is that their policing costs in 1997 were about \$660,000, when the real cost was \$1.3 million. But because it was under contract, that's what they paid.

In 1998, by striking a one-rate, it went from \$660,000 to \$281,000. The rest was picked up by the four rural boards. The OPP carries statistics on responses and calls made on policing. In the ward of Adolphustown in which I live, the 900 people have 3% of all the calls and responses from the OPP. So I don't think it is fair to say, as Mr Lucas did, that Napanee is being done in with the cost of policing. In all my representations at council—and I have been at maybe all the council meetings so far; I think some people consider me an eighth councillor—I don't think that was a fair comment.

I also want to touch very briefly on the process of changing ward boundaries or whatever. I firmly believe that council was grappling with: How is that process going to unfold? What do we have to do and how long will it take to do that? I think that was a consideration, and they weren't sure about that. That's my sense of that one.

As I mentioned earlier, we also have some other issues. This whole question of a negotiated settlement at the amalgamation table, in principle, that's what it was. But previous speakers have alluded to the fact that it was done in a short space of time under a lot of pressure, so I don't think the best results came out of that. A lot of people are now having second thoughts about some of the things they agreed to at that table. It's not that we are saying it's not a negotiated resolution. We are saying it wasn't properly done and now they're having second thoughts about a number of things.

We stacked up the proposal that went from the county of Lennox and Addington against the ministerial order and there are a number of things in terms of area rating of services. Make no mistake about it, we firmly believe that the people at the table recognized that there should be area rating of services because Napanee was a town entrenched with all these services that we don't have. There are certain things that are in the proposal that are not in the minister's order. We can't find out why they're not there and who took them out and so and so forth. We are hoping to do that. We have those issues with the Minister of Municipal Affairs.

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The Chair: I have to ask you to wrap up or it's possible the bill won't be dealt with today.

Mr Gonsalves: I don't want that at all. OK, maybe I'll just leave it at that.

Oh, one last point is the question of public meetings for the weighted voting. I think Mr Clark asked about that. There was one public meeting specifically called by the councillor from the ward of Napanee on this issue, which I attended. There was a petition there, and my understanding was that out of the 4,700 and whatever, they had 50 names on that sheet saying they don't want weighted voting changed.

So there was at least one public meeting. It was advertised in the papers and it was specifically for the constituency of ward 5, but the public was invited. I went and spoke at that meeting and other people spoke, but the bottom line is it is my understanding they had a petition signed by people and there were only 50 who said that weighted voting stays.

The Chair: I just want to let individuals know that it's about seven minutes to 12. The committee is due to rise at 12 o'clock. I can be a little flexible, but people do build their schedules, as I have in terms of my next meeting, based on that. So if we are unable through debate to get this completed today, we'll come back to the next meeting, but I'm sure people would like to see this resolved, if possible.

Mr Wilkin, do you have final remarks?

Mr Wilkin : Thirty seconds, Madam Chair, just to say that I think if there is a common thread in both the parties for and against this legislation, it is the need to continue to look at the issue of ward structure and ward distribution.

My submission to you, though: Passing this bill does not preclude that debate from being carried on. Indeed, I submit to you, maintaining the status quo provides a more conducive environment to having that debate, rather than having that debate in an environment where now some councillors have two votes and some don't.

There is discussion of perception. I'd simply submit to you, who best to assess the perception than the elected councillors of the municipality? It's their will, based on their perception of what's best for the municipality, that this legislation should be enacted. I would ask this committee to respect that request and support the legislation. Thank you.

The Chair: Thank you, Mr Wilkin. Mr Callery, nothing? Mrs Dombrowsky.

Mrs Dombrowsky: Thank you very much, Madam Chair. As you can see, this is a most complex and controversial issue within the community of Napanee in my riding.

I indicated earlier that when the municipality approached my office to sponsor a private bill, I believed I had a responsibility as the local MPP to do that. I have certain opinions on a variety of the elements of the ministerial order and the private bill that has come forward. I, like you, would not be a proponent of weighted votes. However, having said that, I have had correspondence and conversation with constituents, both those who are in favour of the private bill and those who

are opposed. I've indicated to those who are opposed that, as their local member, I would make those points and I will do those now very briefly.

The first one is with regard to the integrity of the initial agreement that was negotiated by all five municipalities. It has been presented to me and, if we want to respect the decisions of elected officials, they are all elected officials who participated in that original document. They would say that if there had been an understanding at the time of amalgamation that the rules were going to change, very possibly the community might look different than it does today.

There was also a question from a constituent with regard to the fact that this has not yet been implemented, so the problems that have been presented are purely hypothetical at this point in time. The question was, why is there a change when nothing has been implemented that can demonstrate that it does present inequity or unfairness or a bullying attitude, which I thought was a valid point of concern.

The other was with regard to the lack of consultation. It has been indicated that one councillor, who I believe voted against this at council level, took it upon herself, because the community had not had an opportunity to really in a more public way be made aware of what the bill was all about, and used her own resources to provide that meeting for the public.

Just with regard to rejigging the boundaries, I think the people at this table need to understand that in rural Ontario it's not as easy as just going to a map and carving up a community along population lines. They have community identities. Adolphustown has an identity. South Fredericksburgh has an identity. They've been municipalities and they were told: "You're no longer large enough to exist. You've got to amalgamate." The people now are left at least with their wards. They continue to be from the ward of Adolphustown. I would suggest to try to even out the wards, there is going to be a reaction within the community. When we talk very cavalierly at this table, "We'll just even it out," it's not, in reality, easily achieved.

I thank you so much. You've really given this a very thorough hearing, and on behalf of my constituents in the municipality I thank you so very much for that.

The Chair: Thank you, Mrs Dombrowsky. Let me just take a look at the committee members. Are people able to spend just a few minutes past 12 to get this resolved today? OK, thank you. We will continue.

Mr Clark, you had indicated that you wanted to put some comments on the record?

Mr Clark: I support the private bill that's before us. With reference to redivision of the ward boundaries, there is the authority and the opportunity for constituents to get involved in the redivision of the ward boundaries through the Ontario Municipal Act. I don't take redivision of ward boundaries cavalierly at all. There are numerous Supreme Court decisions that support representation by population and it's something that any

municipality should look at. My own municipality will be looking at it in three years' time.

I think at this point in time there is ample evidence that we should be supporting the bill. They have an opportunity to deal with redivision of ward boundaries at a later date.

The Chair: Thank you. Is there further debate?

Mr Gill: No further comments.

Mrs Boyer: No, maybe just to say that I too share the fact that it is a complex thing because you've got the pros and cons. We've got people for it. We've got people who wrote letters and I think that public consultation should have been made because this is a very important issue. I would hope they would think about the boundary changes and maybe that way Mr Lucas could reconcile. That's all I have to say.

The Chair: Mr Coburn, did you have any final remarks?

Mr Coburn: Just a couple, Madam Chair. The ministry supports this bill based on a couple of things. One of the things we've been trying to do is put more authority and responsibility on the elected officials in the local situations. Yes, there was a ministerial order, but quite clearly there has been a lot of debate and a lot of discussion and it was laid out to us very clearly by the officials from Napanee.

The council has been taking this issue seriously, and they are elected to represent the views of their public and resolve some of these issues. To give you an example of how the ministry reacts so that we do have the tools in place to make local decisions, there was Bill 25. Unfortunately, that decision was made a little too late to be able to accommodate the council for the year 2000.

The comment was made by my colleague, "Why wouldn't the government initiate this change?" From the ministry's point of view, you cannot anticipate each and every situation and put them into a book. But you can put the tools there that facilitate individual municipalities and individuals to come forward in light of things that we may never have thought of, to be treated in a fair and democratic manner like this. For that reason, the ministry is fully supportive of this bill.

The Chair: Thank you. Seeing no further debate, are members ready to vote? May I ask if there is anyone who intends to move an amendment of any sort? We'll deal with all the sections together then.

Bill Pr22, An Act respecting the town of Greater Napanee, sponsored by Mrs Dombrowsky, MPP:

Shall sections 1 through 3 carry? That is carried.

Shall the preamble carry? That is carried.

Shall the title carry? That is carried.

Shall the bill carry? That is carried.

Shall I report the bill to the House? That shall be done.

Mr Lucas, thank you very much for joining us.

Mr Lucas: Thank you for the opportunity to speak to you today with this nice technology. I'm sorry I couldn't be there, but this a great balance.

The Chair: I appreciate that.

Mr Gonsalves, we appreciate your attendance here today. Mr Wilkin, Mr Callery and Mrs Dombrowsky, thank you very much.

That will be reported out in a report to the House, probably this afternoon. We'll see if we can get it ready. It's most likely to be done this afternoon, and of course it's in the hands of the Legislative Assembly.

Committee members, the next item of business is consideration of a comprehensive response to the first report on regulations, 1999. I wonder if someone might humour me and place a motion to table that till our next regular meeting? Thank you, Mr Gill.

Is there any debate on that motion? All those in favour, please indicate. Those opposed?

That's carried.

Number 5 is any other business. Does anyone have the nerve to raise other business at this moment? I've got something to get to, you can tell.

Could I have a motion to adjourn? Mr Gill, so moved. All those in favour? Carried.

The committee is adjourned.

The committee adjourned at 1200.

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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

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Mercredi 31 mai 2000

**Standing committee on
regulations and private bills**

**Comité permanent des
règlements et des projets
de loi privés**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS

Wednesday 31 May 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Mercredi 31 mai 2000

*The committee met at 1005 in committee room 1.*CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO ACT, 2000

Consideration of Bill Pr4, An Act respecting the Certified General Accountants Association of Ontario.

The Vice-Chair (Mr Garfield Dunlop): Ladies and gentlemen, I call the meeting to order. The first order of business is Bill Pr4, An Act respecting the Certified General Accountants Association of Ontario. Our sponsor today is Mr Bob Wood, MPP. I'd like to ask you, Bob, to take over at this point and introduce your delegation.

Mr Bob Wood (London West): Thank you very much, Mr Chair. As the members I think know, the Partnerships Act was amended a couple of years ago to permit professions to be given the right to set up limited liability partnerships. The actual setting up and application to a particular profession has to be done by legislative amendment. It's already been done for the chartered accountants and for the lawyers. This bill will do the same thing for the certified general accountants.

As far as I know, no objections to this bill have been received. The CGAs would certainly appreciate the support of the committee for the bill. We have with us, from the Certified General Accountants Association of Ontario, Mr Gordon Fuller, who's the executive director, and Mr Ralph Palumbo, who is the director for government relations and legislative affairs for the certified general accountants.

Rather than give a long presentation, we might simply invite these gentlemen to come forward—they're available to answer questions, as am I—and throw the floor open to questions. Gentlemen, could you perhaps come forward and identify yourselves for the purposes of Hansard? We'll see if there are any questions from the committee members.

Mr Gordon Fuller: Thank you, and good morning. My name is Gordon Fuller. I'm executive director for the Certified General Accountants Association of Ontario.

Mr Ralph Palumbo: I'm Ralph Palumbo, the director of government relations for CGA Ontario.

The Vice-Chair: Would either of you gentlemen be making any comments?

Mr Fuller: No, Mr Chair.

Mr Palumbo: No comments.

The Vice-Chair: Bob, do you have any further comments?

Mr Wood: I've completed my submission.

The Vice-Chair: OK. I understand, Mr Guzzo, you're subbing for the parliamentary assistant, Mr Coburn. Do you have any comments?

Mr Garry J. Guzzo (Ottawa West-Nepean): I have not. I have one question: What took so long, gentlemen?

Interjection.

Mr Guzzo: I just want to put the blame where it belongs.

No, I have no questions, Chair.

The Vice-Chair: Do any of the committee members have any questions?

Mr Gilles Bisson (Timmins-James Bay): A couple of things. First of all, I support the legislation; I think it's high time. My question is just generally the other issue, if you're any further ahead with regard to the issue of being able to do some of the work—the other piece of legislation; I'm trying to remember what it's called—around the CGAs being able to do some of the signing-off of the public licences. I know it's a different issue, but I'd like to know if you've got anything planned as far as bringing back something.

Mr Fuller: Thank you for the question. That's an ongoing issue with us. We're dealing with the Attorney General's ministry on that particular piece of legislation under the Public Accountancy Act. We hope it will come forward before too long.

Mr Bisson: I just want to indicate here and now that we support that. We think it's high time something should happen, and I'm wondering if these guys across the way have decided to make things any easier to give you that right.

Mr Fuller: Thank you, sir.

Mr Bisson: Are you going to answer the question?

Mr Fuller: I wish I could. We're still waiting for a definitive reaction from the ministry. I think it's called due process, and it's a little frustrating.

Mr Bisson: That's not what you called it when we were government. Come on now, guys. You guys were a lot tougher. It sounds like you guys are kind of close and you want to have it go to the public?

Mr Palumbo: No, I wish it were.

Mr Bisson: Anyway, I just want to say we think it's high time. That's another piece of legislation, quite frankly. We can't deal with it at this committee because

that changes the authority, but it could be dealt with by a private member's bill or, more importantly, by a government bill.

Mr Fuller: Thank you very much. I appreciate that comment.

Mr Bruce Crozier (Essex): I just wanted to comment, as I did at the previous meeting when we dealt with this bill as to whether we could bring it forward or not, that I can vouch for my colleague here today. Being a CGA myself and having been one since 1967, I can vouch for their character, for the association and its integrity, and I will be supporting the bill.

The Vice-Chair: Are there any other questions? Are the members ready to vote?

Shall sections 1 through 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House this afternoon? Carried.

Thank you very much, gentlemen and Mr Wood, for bringing this forward.

FIRST REPORT ON REGULATIONS, 1999

The Vice-Chair: Item 2 on the agenda is consideration of a comprehensive response to the first report on regulations, 1999. Andrew was going to run us through it.

Mr Andrew McNaught: Good morning. I'm Andrew McNaught. I'm the research officer for the committee. We're here to deal with the committee's report on regulations which was tabled last December. Some of you were here and quite a few weren't, I'm afraid. Anyway, in the report that was tabled we asked for comprehensive responses from two ministries, the Ministry of the Attorney General and the Ministry of Finance, with respect to regulations made under the jurisdiction of those ministries. We now have those responses.

I'll just run through the issues briefly for you again. The first issue concerns two regulations made under the Administration of Justice Act, for which the Ministry of the Attorney General is responsible. Ontario regulations 214/97 and 488/98 are regulations setting the fees for filing claims in Small Claims Court. In these regulations, a distinction is made between frequent claimants and infrequent claimants, with higher fees being charged to frequent claimants. In our report, we raised the possibility that higher fees for one class of claimants might be a violation of the committee's guideline 6, which provides that a regulation should not impose a fine, imprisonment or other penalty.

In its comprehensive response, the ministry argues that we have interpreted the meaning of "penalty" too broadly. The ministry contends that the term "penalty," as used in the context of the guidelines, means something similar to a fine or imprisonment. The higher fees imposed on frequent claimants therefore are not penalties

in this sense, since they're not being imposed as a consequence of committing a prohibited act.

Mr Bisson: Mr Chair, before we go any further, what about the Fuel Tax Act?

Mr McNaught: I'm getting to that later.

Mr Bisson: But I don't have the documents that have to do with it.

Mr McNaught: There should be the comprehensive responses from the ministry plus our report.

Mr Bisson: May I have a copy?

The Vice-Chair: Do people want copies of the report?

Mr Bisson: If I could. Unfortunately, I wasn't on the committee back then and I'm having to come up to speed. If I understand, what you're getting at here is that there's an attempt to charge a higher level of user fee to somebody who continually uses Small Claims Court? Is that what's at issue?

Mr McNaught: It's those who file 10 claims in a year or more.

Mr Bisson: Suggesting that the government do this?

Mr McNaught: Well, it's in a regulation made under the Administration of Justice Act.

Mr Bisson: When was that?

Mr McNaught: There are two regulations. They were made in 1997 and 1998.

Mr Bisson: If I understand correctly, these regulations were brought back to this committee when?

Mr McNaught: All regulations stand permanently referred to this committee, and the research service, on behalf of the committee, reviews these regulations and periodically reports.

Mr Bisson: How did this regulation end up back in committee? Was it the government that brought it back?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): No, they always bring back whatever they think needs attention. It's the research officers who keep an eye on it.

Mr McNaught: We reviewed these regulations and found what we thought were potential violations of committee guidelines, and we corresponded with—

Mr Bisson: I have a more general question, just so I understand, because this is not a committee that I normally serve on. So all the regulations the government makes, or its ministers of the crown, are then circulated to the research department of this committee, and you guys go through it to see if there's anything that strikes you as needing our attention.

Mr McNaught: In the standing orders that govern this committee, there are nine guidelines that we are to apply when reviewing regulations. We report potential violations of those guidelines to the committee, and it's up to the committee to decide whether they want to report a particular regulation.

Mr Bisson: Obviously, I'd like to sit down with you afterwards and go through those nine guidelines to understand that better. What I'm driving at is, can the committee get a copy of all the regulations that are being sent to the—

Mr McNaught: All regulations in Ontario are published in the Ontario Gazette.

Mr Bisson: But I thought there was something else.

Mr McNaught: These are all public.

The Ministry of the Attorney General, in its response, concludes that the narrower interpretation of the term "penalty" is more consistent with the purpose of guideline 6, which is to ensure that penalties such as imprisonment and fines for contravention of a regulation or an act are not imposed by regulation but are imposed under the act itself. In this way, such penalties can only be imposed after the debate of the assembly.

I should point out that it has been several years since the committee has reported a regulation under the penalty guideline. I had to go back to some of the committee's first reports in the late 1970s to find any discussion of this issue. It's my feeling that the ministry's interpretation is probably a good one and in fact appears to coincide with the view taken by the committee in several reports several years ago.

Those are my comments on that issue. It's up to the committee to decide where to go from here.

Mr Bisson: I might still need some clarification. The reason this particular regulation was snagged as something for us to take a look at was because you had concerns that the penalty sections were not in keeping with the mandate of this committee. Can you explain a little bit more what you're getting at there? Where was it in violation, in their view?

1020

Mr McNaught: In the report—you have a copy of that now. It's on page 6. Essentially, these regulations set the fees that are charged to people who file claims in Small Claims Court. You'll see that for that class of claimant known as the frequent claimant, the fees are significantly higher. We simply raise this as a possible violation in that it's penalizing those who use the court more often than others.

Mr Bisson: I've got you. I've got to say, my initial reaction was basically the same thing: How can you have a system of court that says, just because you've gone more often than somebody else, we're going to charge you a higher filing fee? I think, quite frankly, that's not something that should be allowed. My difficulty is that I'm wondering if this committee has the power, as members, to try in any way to stop what is being attempted by the government.

Mr McNaught: The committee can simply report this to the House and that's the end of the committee's role.

Mr Bisson: I can tell you right now, I have a problem with the whole concept that just because somebody has gone to Small Claims more than 10 times in a year, they're being penalized. For example, I was in small business and I used the Small Claims Court quite often for bills that were not paid by people I had done business with. I was in the television repair and sales business. Often people would not pay their bills and we'd have no other means to get the money that was owed. If you are now going to start charging small business people an additional rate because we have people who don't want to pay their bills, I don't see that as being particularly

fair. I think we should try in some way, as a committee, to send a message back to the government saying, "Let's not penalize the small business sector or other people who use the Small Claims Court as a means of getting what's theirs."

Mrs Claudette Boyer (Ottawa-Vanier): At first, Gilles asked, why are we discussing this? I remember very well the meeting in December where we did get this report and we asked for follow-ups. We were supposed to do it two months ago, I think, and we didn't have a chance. This is the response that we asked for. I just wanted to make it clear.

Mr Bisson: In all the times I've come to this committee, I've never seen this. Normally, it's somebody who wants to have a private bill. So it goes to show an old dog can find new tricks.

Mr Crozier: Just a general question. When you go to Small Claims Court, as I recall, having been in business as well, the cost is added to the debtor's debt. Is that correct? Can anybody confirm?

Mr Guzzo: Not always, but that's the general rule.

Mr Crozier: My point is, even going to Small Claims Court doesn't mean you're going to collect the money even if you get a judgment, but there is the opportunity at least for the claimant to recover those costs.

Mr Bisson: I just wondered if they have the same concerns. I'm sure you have the same concerns as I do, and I just wanted to know if you had any comments.

Mr Wood: I guess the theory behind this is to try to discourage those who put in nuisance claims. The point was made by Mr Crozier a couple of minutes ago that the court can do that in costs now, and often does, if the claim is without merit. If you have a lot of claims that are with merit, I don't know exactly what the reasoning is behind this particular regulation.

My submission to the committee is similar to the one I made some five or six months ago. You might want to consider the Red Tape Commission as a resource with respect to the report you have today. We accept individual complaints, as the members know, and our mandate is to make sure that the government follows good regulatory practice. If there are some doubts, there is no reason that you can't refer this to us for our opinion if you wish to. So please consider that as a resource that could be made use of.

I would suggest that in attempting to rectify any problems you might identify, to the extent that they are done in a way that shows the ministry the error of their ways as opposed to creating confrontation, there is probably a greater likelihood of an actual result.

Mr Bisson: I hear what you're saying, and that distresses me no end. What you're saying is that if somebody takes an opposition voice to the minister that's too loud, they're going to dig in their heels and not do anything. I think it's a hell of a statement to make about any minister of the crown and I hope that's not the case. If we decide by way of committee to send back a report to the House that we think this is a bad idea, that's fine, but I'll tell you, don't say to me just because people take

a stronger voice than others in opposition, somehow or other that's going to result in not having action by the minister. If that's the case, democracy is in serious trouble.

Mr Gill: Originally, I had similar concerns as Mr Bisson has as to, why should we penalize somebody? As Mme Boyer said, we've been involved in this a little bit more than yourself, Mr Bisson, in terms of this particular item. Then I started thinking, is the analogy the same as a vacation traveller versus a business traveller? We recently were in Sudbury and in Windsor. As a business traveller, your ticket ends up being \$600, \$700. As a vacation traveller, if you went one day and came back a week later, it might be \$200. The analogy I'm driving at is, if you're running a business, be it a collection agency, be it so many claims that you keep putting in and hopefully some of them you're going to win, the courts therefore should be charging you more because this is your business—to collect money back.

If you are finding some problems—let's say you have a few cases: one, two, five six. You are like any ordinary person, and you shouldn't be charged too much money to access the facilities. But if you're running as a business many, many claims, then you should be paying for it because of that.

Mr Bisson: First of all, I don't agree with your analogy of the airline business. Any traveller, either business traveller or vacation traveller, who travels at the last minute or on short notice as we do, pays through the nose. The reason vacationers are charged less is that normally their holidays are booked way in advance and the airlines are trying to fill seats. So the analogy is not a good one.

I just come back from the perspective of where I understand my interactions with Small Claims Court. I don't know how many times I would go to Small Claims Court every year, but I can tell you it was certainly more than 10. Most of us who have been in small business and who had to deal with people on credit would know that we often get stiffed. I'm not going to get into the percentages, but we often get stiffed with bills that are not paid and we have no way of being able to remedy that.

Currently, the way it works, and I was glad Mr Crozier raised it, is that the judge has certain discretion. If, for example, I am a businessperson or an individual who far too often appears before his or her court, the judge, as Mr Guzzo would know, has an ability to deal with that by awarding costs to the other person or not ruling in my favour—of finding some way to try to discourage me from utilizing the court for matters that shouldn't be there.

But the reality is that most people who use it frequently, unfortunately, are small business people, because they don't have ways and means otherwise to recoup the losses they've got by bad credit. I just think it's a really bad idea. In the end, the judge has the right to charge back to the person who owes the bill. For example, if I'm a small business person going in, the

judge can very well say, "All right, Mr Gill"—the person I'm going after—"you have to pay the costs to the court." But that doesn't always happen, as you know, Mr Guzzo. I've been before Small Claims judges a number of times, and these matters are sometimes grey. The judge finds himself or herself in the position of trying to find some saw between the two. Often, I used to get my money back, but I had to pay the costs. That, I would say, was about 50% of the time. If I, trying to recoup a bad debt, am going to have to pay extra, I think it's a bad idea. I think as a committee we should be sending that message back to the government. I take Mr Wood's comments and suggestion as a friendly one; I don't mean to badger you. But we as members and I think people who understand what small businesses are going through should say back to the government: "This is not a good idea. We ask you not to do this." If I could do that by way of a motion, or whatever's the way to do it—

The Vice-Chair: The clerk is going to explain this as far as our committee's concerned.

1030

Clerk of the Committee (Anne Stokes): The committee reports to the House, and the committee has made a report to the House regarding this particular regulation and one other and the ministry has responded. So the business now is to determine, is the committee satisfied with that response? The committee could be directed to write a letter to whoever you wish. We could also make a second report to the House saying that, in the committee's opinion, this regulation contravenes the guidelines as outlined in the standing orders. The committee could also ask the legal staff at the ministry to come to the committee and further explain why they feel it's not a penalty. There are the nine guidelines we're reviewing that the research officer reviews the regulations against. In the opinion, this one was, "Regulations should not impose a fine, imprisonment or other penalty," so that's the issue at hand: Does this particular issue impose a penalty? The ministry is responding saying no, it's not. So we could ask for further information from the ministry; they could actually come to the committee and further explain. We could report to the House and say that we're still not satisfied.

Mr Wood: There's a further alternative, if you want to exercise it, which is that as you are considering this, seek the opinion of the Red Tape Commission: Do they think it's a good regulation or don't they?

Mr Bisson: So you're saying, if I understand you correctly, that we would not do anything with this at this time until we actually refer it to the Red Tape Commission, or that as a committee we send it to the Red Tape Commission.

Mr Wood: Simply to get a further opinion. It then comes back here, with the benefit of that opinion, for whatever—

Mr Guzzo: Don't ask the Red Tape Commission to do anything; just get an opinion.

I think there might be more to this than meets the eye. At first glance it looks like somebody said: "We've got to

get a method of having these things pay their own way. Make the Small Claims Court pay its own way." They didn't want to increase the fees too much, discourage people from going. What happened? Who are the big users of the Small Claims Court? Yes, there are some small businesses, but collection agencies, really. But the collection agency is just an agent representing a number of small businesses. It may only have eight or 12.

If you get it into the hands of the Red Tape Commission for an opinion, I think you buy the time and the window of opportunity you require.

Clerk of the Committee: I would like to impress upon the committee that the committee is not here to review or consider the merits of any policy or any regulation. It's within those strict guidelines. It's not policy. I wouldn't want to see you getting into requesting an opinion of the commission regarding the merit of that particular regulation or of the policy itself. The committee's only looking at, against this guideline, the interpretation of the penalty. I think that's what it rests upon.

Mr Guzzo: But your instructions, as I understood them when you were speaking just now, Madam Clerk, was that it is open to us to make another report to the House.

Clerk of the Committee: Yes, it is, and we can ask for further information.

Mr Guzzo: If it's open to us to make another report to the House, it's open to us to do some more research, and if one of the ways we want to do that is to get an opinion from the doorman at the Chelsea or the Red Tape Commission or whoever, we're free to do it.

Clerk of the Committee: Yes. I just wanted to clarify, the narrowing of the scope that we would be investigating.

Mr Bisson: That's why I was asking the questions earlier. As I understand what you were saying, all we can do is to say, does this regulation measure up to the nine guidelines that constitute the powers of this committee? From what I heard you say earlier on, you tend to agree with the ministry's interpretation. That's what I heard you say.

Mr McNaught: I'm not disagreeing or agreeing with the underlying policy. It's strictly on a sort of a legalistic issue here.

Mr Bisson: But you look at the ministry's response and say, "You know, they make a point."

Mr McNaught: What I'm saying is that the issue here is the interpretation of the term "penalty." In the guidelines, "penalty" is used alongside of "fine" and "imprisonment." All the ministry is saying is that the imposition of higher Small Claims Court fees for frequent claimants isn't in the same nature as imprisoning or fining somebody, so in that sense it's not a penalty.

Mr Bisson: So the option they present as to what you can do, to refer this matter back to the Red Tape Commission, in fact would not be in order for us as a committee, because we're asking them on what really would be a policy issue, and this committee cannot change policy; all we can do is deal with the actual

regulations or bills. Am I correct? Even if they come back to us and say, "Yes, we think this policy is stupid," there is nothing we can do about it. All we can do is deal with the legal matter. If that's the case, my options are to either call the ministry lawyers in and ask some questions or to report back to the House. I would opt at this point to bring the ministry lawyers back in. That's what I'd rather do at this point. It would give me the opportunity to seek legal counsel ourselves and talk to research about your opinion on this and see if this is what we want to do.

The Vice-Chair: That is an option. How does everyone else feel about that?

Mr Bisson: I don't think we have much of anything else to do.

The Vice-Chair: Mr Bisson is suggesting we get some ministry lawyers in to explain it.

Mr Gill: We could take another kick at the can at that time and perhaps get some more explanation.

Mr McNaught: I don't know if you've had a chance to go through the ministry's comprehensive response, but my own sense is that I don't think there's a lot to be added to what they have to say in the comprehensive response.

The Vice-Chair: Is Mr Bisson making that a motion?

Mr Bisson: Sure.

The Vice-Chair: That's moved by Mr Bisson that we ask the ministry lawyers to come in and explain this a little further. Are there any other comments on that? All in favour of that? Who had their hands up? That's carried.

Mr McNaught: There's a second issue as well. I'd better find the page reference for you in the report. I believe it's page 7. That deals with two regulations, one made under the Fuel Tax Act and the other made under the Gasoline Tax Act. The Ministry of Finance is responsible for these regulations.

These regulations implement the international fuel tax agreement, to which Ontario is a signatory. The regulations came into force on January 24, 1999, but provide that they are to be retroactive to January 1 of that year, so they take effect more than three weeks prior to the date on which the regulation came into force.

As mentioned in our report, we could find no specific authority in either act to make these regulations retroactive, in effect. Therefore, we raised the possibility that these regulations violate committee guideline 4, which states that regulations should not have retroactive effect unless clearly authorized by statute.

Our position is that for a regulation to have retroactive effect there must be clear authority in the section under which the regulation is made, and in this case, we could not find that authority.

I refer you now to the handout you have on the Fuel Tax Act. The essence of the ministry's argument is that although there may not have been a specific authority in section 28.2—you'll see that on the first page of the handout, and underlined is the regulation-making authority for that section. The international agreements remain under this, were adopted and the regulations made

under section 28.2(5), and it says nothing about retroactivity.

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However, the ministry's position is, "Because you have authority in section 29"—which is on the second page you have, and at the bottom I've underlined the regulation-making power in section 29 which does make reference to retroactivity—"that's implied authority to make regulations under any section to be retroactive." So a regulation made under 28.2 can also be retroactive because 29 says you can do it.

There are a couple of principles that we feel apply here. The first is that in analyzing legislation it seems reasonable to assume that subsections are grouped together within a particular section to express related matters. Thus, it would be reasonable to assume that subsection 29(3) in the Fuel Tax Act relates to the regulations made under subsection 29(1), but not to regulations made under another section, a section such as 28.2. Second, the academic authorities on statutory interpretation say that retroactive legislation should be strictly interpreted. In other words, the intent to make a statute or regulation retroactive should not be implied; rather, it should be clearly stated.

In conclusion, we continue to see the regulations made under the Fuel Tax Act and Gasoline Tax Act as a possible violation of guideline 4.

Mr Bisson: Can I just clarify one thing? If they were to get the right to collect the tax retroactively, in the grand scheme of things, what does this mean? The province is stuck on the—

Mr McNaught: You would probably have to ask the ministry questions like that.

Mr Bisson: It's fairly clear from your interpretation, basically—and I agree with you because I've gone through that on other bills before, not on this committee, but in the House and on clause-by-clause. It's always been explained to me that you have to specifically spell out per section what rights you're going to give the minister when it comes to the ability to make regulations and to what extent. So I agree with your interpretation. I think we should not allow this to be accepted.

The Vice-Chair: Further questions? Are you asking the ministry to come here and explain that as well?

Mr Bisson: In this case—and please help me out here—we have the right as a committee, because it clearly does, in my opinion, violate the guideline, to report back to the House that we feel this particular regulation violates the guideline; that it should not be accepted, or they should change the statute.

Clerk of the Committee: The committee can report to the House. The first report was the one where we identified the problems. In the second report, the committee could say: "Here's the second report and we disagree. We feel that this particular regulation violates the guidelines." The committee can just present the report and there is no response required. The committee could present that report and ask for the House to consider the recommendations made in it, or just ask and move its

adoption. Those are the options available for the committee.

Mr Bisson: Move the adoption of recommendations of the committee to either change the regulation or to drop it, right?

Clerk of the Committee: It's basically that, yes.

Mr Bisson: Then that's what I would suggest.

Clerk of the Committee: OK, so we would ask the research officer to write the report and then table that report.

Mr Bisson: Yes.

Mr McNaught: Do you want to do that separately from the other issue as well, or wait until we've heard from the ministry?

Mr Bisson: We could do it all at once. I don't think there's any use doing it separately. We should deal with it as one matter, the two items. We could deal with that in our further report.

The Vice-Chair: Mr Gill?

Mr Bisson: There's a real bad buzz here.

Mr Gill: I think it's the Chair. His microphone is somehow echoing.

This could perhaps be my ignorance, being a new member, but part of the regulation—whether it appears in 29 or 28. My thinking is that it does give them the retroactivity under 29.3, on the next page, so I'm assuming it should apply to 28 and 30 and whatever, as long as it's part of the same regulation—a different sub-class. Perhaps we can get an explanation on that. I'm of the opinion, what's the difference? If it shows on 29, then it does apply to 28 and 30.

The Vice-Chair: But legislative counsel has identified this as a problem.

Mr Gill: No, I heard that. But my opinion is, are we getting too strict? Are we getting too limited in our thinking? I'm not trying to relate this to another bill or another regulation. It's part of the same regulation.

Mr Crozier: I appreciate what Mr Gill is saying. I'm thinking I really don't mind that this is retroactive, it's just how we're going to go about making it retroactive. So, you might say, what difference does it make? But there may be another instance come along some day that I'm not so pleased about; therefore, it really makes a difference. I think we have to look at the precedent we're setting, whether fuel tax or whether it's any other item.

I understand what you're saying, but I think we should treat this the same as we would anything that comes along in regulations, with this same opinion.

The Vice-Chair: Mr Wood, care to comment?

Mr Wood: The issue is, does the statute give power to make retroactive regulations? I think section 28.2(5), which reads "The Lieutenant Governor in Council may make regulations that are necessary or advisable to implement an agreement entered into under this section," is sufficiently strong to support the regulation.

Mr Bisson: I guess I'm next up. I read that as not giving retroactivity. I hear the argument you're making. The issue, to me, is not whether it's desirable or not desirable to give retroactivity. Probably it is. I don't

know. My point is that this committee is charged to take a look at the regulations to make sure they're consistent with the due form in which we write regulations, according to our guidelines as a committee and according to the statutes of the Legislature. What I'm hearing the research officer say here is that in this particular case, it was an error. I don't think in the grand scheme of things it was anybody trying to put anything past us; it was just an error in the way they wrote it and they're going to have to change it. Basically, I'm recommending that happens.

Mr Wood: Section 28.2(5) does not give them the power to make a retroactive regulation. That's what he's saying.

Mr Bisson: The ministry's saying they do.

Mr Wood: Yes. I'm saying in this case the ministry's right. I don't think it's marginal. If indeed they have made a regulation they don't have the power to, let it be challenged in the courts. I don't think you'd have much trouble supporting the regulation.

Mr Bisson: But I disagree, because if you take a look the way sections are already written, when we give the power to the minister to write regulation we're fairly clear about retroactivity. It's normally very well spelled out in the law that the minister has a right to make regulations and can make it retroactive to a certain date.

In this particular case, if you take a look at 29(3), that's exactly what it says. It's silent on retroactivity in 28.2(5). Therefore, I read that as that he or she doesn't have the right to do retroactivity. That being the case, I think we basically report back to the House, when we do our report, once we've heard on the other regulation that we have to deal with, that in the opinion of this committee that regulation doesn't provide retroactivity and if the government feels it needs to be, make a change in the statute. In other words, put it a red tape bill or something.

Mr Guzzo: Look, if this were not a tax bill, if this were any other piece of legislation, it wouldn't be a problem. It's only because the courts have interpreted tax

legislation as strictly as they do. I agree with Mr Wood. I say do it, and if somebody is so disposed as to moving to strike it down, let them try.

Mr Bisson: First, I don't quite agree with your interpretation. I've made the argument and I'm not going to repeat it. You have made your argument and you're not going to repeat it. Obviously, we disagree.

I am moving a motion that when we go back and report overall, the report we send to the House, one of the things we report is that this regulation is not in keeping with our guidelines as a committee and therefore should be changed. That's one of my motions, that rather than voting for it we're voting against it.

Mr Guzzo: Let's get on with it.

Mr Bisson: Recorded vote. I want to know who's with me and who's against me.

Ayes

Bisson.

Nays

Boyer, Crozier, Gill, Guzzo, Wood.

Mr Bisson: I have a question: Can I do a vote against when we report to the House?

Clerk of the Committee: In the report I believe you can have a dissenting opinion.

Mr Bisson: That's what I wanted to raise. When we report back to the House on the other matter, I want it noted that myself and the party disagreed. This, quite frankly, doesn't give much.

Mr Guzzo: Do you think your party agrees with you?

Mr Bisson: Yes, all the time. I know I can get at least 10% of them to agree with me. That's all I need to win.

The Vice-Chair: Is there any other business anyone wants to bring up? OK. We're adjourned at this time.

The committee adjourned at 1052.

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Mercredi 14 juin 2000

**Standing committee on
regulations and private bills**

**Comité permanent des
règlements et des projets
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 14 June 2000

Mercredi 14 juin 2000

The committee met at 1004 in committee room 1.

Clerk of the Committee (Ms Anne Stokes): Good morning, honourable members. The Vice-Chair and the Chair are both absent this morning, so it is my duty now to call for elections for an Acting Chair. Are there any nominations?

Mr Gilles Bisson (Timmins-James Bay): I nominate Pat Hoy.

Clerk of the Committee: Mr Hoy is nominated. Are there any other nominations? Seeing none, Mr Hoy is Acting Chair for this morning.

1264030 ONTARIO INC. ACT, 2000

Consideration of Bill Pr21, An Act to revive 1264030 Ontario Inc.

The Acting Chair (Mr Pat Hoy): Good morning. I'll call this meeting to order and call Bill Pr21, An Act to revive 1264030 Ontario Inc. Mr Bartolucci would like to make some opening comments.

Mr Rick Bartolucci (Sudbury): I appreciate the opportunity to make very brief comments. This is an act to revive this company. We have a teleconference with the lawyer representing the two individuals. They appear to have followed all the rules and regulations that set out the requirements to revive this. So I turn it back over to you, Chair. If there are any questions, I believe we have, via teleconference, Mr Lacroix.

Mr André Lacroix: Yes, I'm here.

Mr Bob Wood (London West): Have any objections been received to this bill?

The Acting Chair: I don't believe there have been.

Mr Wood: Do you know that?

Mr Bartolucci: There have been no objections received. Mr Lacroix, can you substantiate that?

Mr Lacroix: There have been no objections received here either.

M. Gilles Bisson (Timmins-James Bay): Bonjour, monsieur Lacroix. C'est Gilles Bisson, député provincial de Timmins-Baie-James.

Je voulais savoir—on a seulement devant nous ce projet de loi—pourquoi vous avez changé le nom de votre compagnie.

M. Lacroix: Je vais vous répondre assez brièvement. Ces gens-là ont engagé un avocat en janvier 1998 pour incorporer une compagnie et ils lui ont versé des argents. L'avocat leur a remis les articles tels quels, 1264030. Sur

la base des articles, ils ont procédé à opérer la compagnie, leur business avec la compagnie. C'est seulement en 1998, lorsque le comptable a fait le premier rapport, qu'ils ont été informés que la compagnie avait été dissoute.

La raison pour la dissolution, qui normalement est facile à renouveler, c'est que le chèque qu'il avait soumis pour payer les frais n'a pas été honoré. Alors, apparemment c'est une raison qui exige que la compagnie soit renouvelée par un acte de parlement.

M. Bisson: Donc, la seule manière de résoudre votre problème est en travers.

M. Lacroix: C'est ce que j'ai fait là. Oui.

M. Bisson: OK. Nous, le NPD, n'avons pas d'objections. Je suis sûr que M^{me} Martel n'a pas d'objections.

M. Lacroix: Vous êtes bien aimable. Merci.

M. Bisson: Puis, la business va bien dans votre coin ?

M. Lacroix: Ce n'est pas si mal, monsieur Bisson. C'est peut-être même un peu mieux que dans votre coin.

M. Bisson: Dieu merci.

The Acting Chair: Are there any other questions? Mr Lacroix, do you have any other remarks?

Mr Lacroix: No. I think that these people were not aware of what had happened to them. The solicitor involved is no longer in practice; he either resigned or was disbarred. So they faced the reality of going through this process and will appreciate the result.

The Acting Chair: Let me say that there has been no written submission or question from the government on this particular bill, for the record. Are we ready to vote?

Shall sections 1 to 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Agreed.

Mr Bisson: Before we go to the other bill, I just have something I'd like to raise, once we're out of this vote and before we go to the other one.

1010

The Acting Chair: Thank you, Mr Lacroix, for your input this morning. Mr Bisson.

Mr Bisson: It's just on the issue of teleconferencing. I understand why this was done this morning, and obviously it didn't affect the outcome of the vote, but I just want to put on the record that I'm not as comfortable as maybe others are when it comes to utilizing

teleconferencing for these kinds of things. I find it takes away from the dynamics of being able to look somebody in the eye. The other thing is, it was fairly difficult to understand what Mr Lacroix was saying. You really had to strain through the process. I just want to put it on the record this is not the preferred way of doing things. I don't want this becoming a habit.

The Acting Chair: Thank you for your comments.

HURON UNIVERSITY COLLEGE ACT, 2000

Consideration of Bill Pr24, An Act respecting Huron University College.

The Acting Chair: The next order of business is Bill Pr24, An Act respecting Huron University College.

Mr Wood: Mr Chair, this is a bill to alter the organizational and administrative structures of Huron College and to change the name to Huron University College. We have with us today Mr Grant Barker, who can perhaps come forward and identify himself for the purposes of Hansard. As far as we know, no objections have come forward to the bill.

Mr Grant Barker: My name is Grant Barker. I am counsel to the law firm of Siskind, Cromarty, Ivey and Dowler. I am also a member of the executive board of Huron College and have chaired the ad hoc committee on the amendment to the Huron College Act.

Mr Wood: The two of us would be pleased to answer any questions there may be from the committee members.

Mr Bisson: What exactly are we doing in this bill?

Mr Wood: What we're doing is changing the organizational and administrative structures of the college, as set out in the bill, and changing the name, which is proposed to be Huron University College.

Mr Bisson: Just a name change, basically?

Mr Wood: A name change and administrative procedures change.

Mr Bisson: I take it because it was created by an act of legislation—college name or something?

Mr Wood: I'm sorry, I didn't hear.

Mr Bisson: The reason we have to bring this through a private bill process is because it was originally created under a bill with the Legislature?

Mr Wood: Correct. The name and the procedures are mandated by law and now, to change them, you have to change the law.

Mr Bisson: What are the substantive differences in the procedures that you want to change? Is there anything substantive?

Mr Barker: There are two or three items that we are proposing to change in this legislation, the first being that we want to increase the size of the executive board, or board of directors, from eight to 12. Second, we are currently restricted in that our board of directors must come from the diocese of Huron. Our college has a theological history. The diocese of Huron encompasses several counties in southwestern Ontario. Our desire is

that we may go outside that geographic area to select our directors.

We have also attempted to provide that our board of directors and members of our college are appointed for four-year terms rather than the two- and three-year terms that are now provided, and that the executive board is entitled to determine by bylaw the length of time that its chair sits. It is now fixed at four years. We find that chairs cannot usually serve for that length of time, so we want to allow some flexibility in that. In addition to that is the name change that we are requesting.

Mr Bisson: Two quick questions: In reverse order, the first one is in regard to fixing the term at four years. How often would that person be able to be reappointed once appointed? Is there a limit on terms?

Mr Barker: Yes, three consecutive terms.

Mr Bisson: So a total of 12 years.

Mr Barker: Yes.

Mr Bisson: The second question is, is moving from a board of eight to 12 because there's a higher enrolment in the college, it's bigger than it was originally created at? Is this the reasoning?

Mr Barker: Not primarily. There's a desire to increase the number of directors. Recognizing that directors serve in a voluntary capacity, we need a larger base from which to hold meetings. We can't always get a sufficient number of people when we're restricted to eight.

Mr Bisson: Would your quorum size change?

Mr Barker: The quorum would be a majority of those.

Mr Bisson: Do you get any provincial funding? I don't think you do.

Mr Barker: Yes, we do. The annual budget of the college is \$10 million, of which 31% is funded by government.

Mr Bisson: So they fall under the Council of Regents then, as well, under the larger provincially body as well.

Mr Barker: Yes.

Mr Wood: This is not a community college. This is affiliated with the University of Western Ontario. When you say the Council of Regents, you're thinking of the community college Council of Regents. I don't think they fall under that.

Mr Bisson: So they fall under what auspices?

Mr Wood: They're affiliated with the University of Western Ontario so they're part of the university system. If the Council of Regents you're referring to is the community college Council of Regents—

Mr Bisson: So the degrees are actually coming under the name of the other university?

Mr Wood: They're affiliated with Western.

Mr Barker: Huron has degree-granting privileges in theology. Those privileges have been deferred to the University of Western Ontario. Huron gives courses in liberal arts and social sciences. It does not have degree-granting authority. Those degrees are granted by UWO.

Mrs Claudette Boyer (Ottawa-Vanier): I guess Mr Wood asked at a different point the question I wanted to ask. Basically, it was never a community college?

Mr Barker: No, Huron College is the founding college of the University of Western Ontario, founded primarily as a theological college, but pursuant to its affiliation agreement with the University of Western Ontario, the university actually grants the theological degrees but has permitted Huron College to provide courses, as I said, in liberal arts and social sciences.

Mrs Boyer: That would give a university degree?

Mr Barker: Yes.

Mrs Boyer: OK, that answers that my question.

The Acting Chair: Mr Young.

Mr Young: My question was answered by Mr Barker and by Mr Wood, so I have nothing further.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): I think one of the analogies might be that close to where I live there's Erindale College, or there was Erindale College, which was, again, a satellite attachment to the U of T. Then it was later changed, perhaps for the same reasons, to University of Toronto, Mississauga campus. I think there's a similarity there. Is that correct?

Mr Barker: I'm not sure of the reference you made. The desire to change the name from Huron College to Huron University College is primarily the confusion that exists in calling yourself a college and being related to a community college as opposed to offering university degrees.

Huron is a college that is now recruiting students in China. We have a Beijing program at the college. We recruit a number of students internationally. There's always a difficulty in explaining what you are if you cannot call yourself a university, so our primary focus is to have "university" in our name.

Mr Gill: I can understand that, especially in terms of foreign context.

Mr Barker: Yes.

Mr Gill: Foreign students, who pay substantially more money, I understand—

Mr Barker: Yes, they're full-paying tuition.

Mr Gill: —are more attuned to saying, "I'm going to university," rather than a college, so I can understand the difference.

Mr Bisson: Just one last question to research: In regard to moving from eight to 12 as far as the size of the board, I take it that's not out of step with any other universities out there. I take it that wouldn't create any kind of precedent or problem?

Ms Susan Klein: No, I don't think it's significant.

Mr Barker: I suspect that most universities would have boards that are probably 20 to 25. They're very substantial boards.

The Acting Chair: We have received no comment from the Ministry of Training, Colleges and Universities, certainly nothing in the negative. Are there any other questions? Any other comments, Mr Barker?

Mr Barker: I have none, thank you.

The Acting Chair: Thank you for being with us here today.

The Acting Chair: Are we ready to vote?

Shall sections 1 through 18 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Agreed.

Mr Bisson: I just have one other question, to the clerk of the committee in regard to the work that was being done by, I believe, leg counsel or research with regard to some of the regulations the committee was working on. What's the status on that?

Clerk of the Committee: I've been in contact with the Ministry of the Attorney General, and next week, on Wednesday morning, we will have a meeting scheduled with a representative from that ministry to clarify or discuss the response.

Mr Bisson: Good. That can be expected next week?

Clerk of the Committee: Yes.

The Acting Chair: Any other business?

Mr Bisson: Well, I think it would be very interesting for us to travel to, let's say, Switzerland or somewhere to study parliamentary procedures of regulations and private bills in that fair country. I'm just wondering how members of the government feel about this?

Mr Young: Will that interfere with our trip to France?

The Acting Chair: The committee stands adjourned.

The committee adjourned at 1021.

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Mrs Claudette Boyer (Ottawa-Vanier L)

Mr Brian Coburn (Carleton-Gloucester PC)

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale PC)

Mr Pat Hoy (Chatham-Kent Essex L)

Ms Frances Lankin (Beaches-East York ND)

Mr Bill Murdoch (Bruce-Grey PC)

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**Standing committee on
regulations and private bills**

**Comité permanent des
règlements et des projets
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 21 June 2000

Mercredi 21 juin 2000

The committee met at 1008 in committee room 1.

FIRST REPORT ON REGULATIONS, 1999

The Chair (Ms Frances Lankin): I call the meeting to order. The committee is here today to consider a comprehensive response to the first report on regulations, 1999, from the Ministry of the Attorney General. Committee members will remember there were two items in that response where we were looking for reaction from two different ministries. One of those matters the committee has already dealt with; the second, an outstanding matter, is with respect to the Ministry of the Attorney General.

The committee had asked that the ministry attend before the committee during the Legislature's 2000 spring session. The ministry provided a written response in March that was circulated to committee members. Upon reading that, committee members had a discussion and determined that they wanted to proceed to have the ministry come forward and clarify.

I remind committee members of the terms of reference of our committee. Although we all want to get into policy and discuss the merits of what various ministries are doing, our terms of reference are very specific. The matter before us with respect to a Small Claims Court fee differential has been—the questions the committee has raised are, under our terms of reference, looking at regulations and the prohibition that they “should not impose a fine, imprisonment or other penalty.” The discussion before us today is whether or not the regulation that the ministry has put forward in fact does constitute the imposition of a fine, imprisonment or other penalty. It is a legal argument essentially that will be presented in terms of the clarification of the intent of the ministry and the meaning of those words on the face of them.

I'm going to ask the ministry representatives to first of all identify themselves and then perhaps proceed with any presentation you would like to make. I'll then turn it over to the committee if they have questions. Would you like to begin?

Ms Debra Paulseth: Thank you, and good morning. My name is Debra Paulseth. I'm the acting assistant Deputy Attorney General for the court service division in the ministry. With me today are two other counsel: Ann Merritt and Lois Lowenberger.

Perhaps briefly, I could indicate that we are certainly here in answer to the request from the committee. We have interpreted the meaning of the term “penalty” to mean an adverse consequence for doing a prohibited act, particularly a punishment or fine for breach of a law or a rule. It was never the intention of the ministry, during any of our rationalization of fees, to impose such a consequence on people who absolutely require access to the justice system. We had understood that infrequent users are most commonly individuals or small businesses and we in fact wanted to provide them with an assurance of access to the court by giving them a smaller fee than frequent users. Frequent users are most commonly larger institutions, and it's our understanding that in 1999 that actually formed less than 20% of the claims filed with the Small Claims Court in Ontario.

The fees for infrequent users were established at a lower level to effectively increase the level of subsidy by government for individuals and for small businesses. It was felt that raising the fee for infrequent users to the full level paid by frequent users would place a considerable burden upon individuals and small businesses. We have raised the fees, as is usual, every several years under the administration of justice in an attempt to increase the proportion—certainly not the full cost, but the proportion—of revenue to cover the cost of providing access to the courts.

We would be concerned that the proposed interpretation of the term “penalty,” which appears to be suggested by the standing committee's interpretation, might in fact prohibit all distinctions in treatment between different categories of persons. There are many regulations in Ontario and in other jurisdictions that create categories of individuals and impose different standards on them. We do not believe that such regulations have ever been interpreted as creating penalties within the way we have interpreted the term “penalty.”

The purpose of the fee differential in the Small Claims Court, and in fact across many of our courts—the Supreme Court has a different fee and many of our Ontario courts have no fee—is to maintain the integrity of the justice system at large, and in this case in particular the Small Claims Court as the people's court.

Thank you very much for this opportunity to appear. We're very happy to answer questions or give examples of other fee differentials that we have identified.

The Chair: Thank you. I think that might be a helpful place to start, if you could give us some of the examples of other categories of users. In particular—I think it would be obvious—the concern to the committee was that the differential here was tied to a category based on volume of usage of the system as opposed to any other distinguishing factor like size of the institution versus an individual. So it appeared to have a direct relationship with the degree to which a party made access or attempted to make access to the court. If there are any other of the categories or fee differentials that could help us understand how in the ministry's mind that isn't a penalty for frequent use, for example, that would be helpful.

Ms Paulseth: Do you want to give some examples, Lois, that you've identified?

The Chair: Could you identify yourself for Hansard too, please?

Ms Lois Lowenberger: Lois Lowenberger. In response to the chairperson's question, we've identified some differential regulations but I'm not sure they specifically address the type of category that you're looking at.

For example, under the Highway Traffic Act there are differential fees for persons over and under the age of 65 years for the same driver's examination and licensing class. As you know, under social welfare legislation there are a number of categories created for access to particular types of benefits. Under the Personal Property Security Act fee structure there are differential fees for a registration period of less than 25 years or in perpetuity. I might mention also that in the Superior Court, under the Construction Lien Act, there are differential fees for filing a claim below \$6,000 and above \$6,000.

We've identified a range of different types of categories. I don't know if that's of any assistance to you, because it doesn't specifically address the usage argument.

The Chair: Committee members?

Mr Pat Hoy (Chatham-Kent Essex): I think you've hit it quite rightly: It doesn't address the usage factor.

The difference in fees, as I see here: Filing of a claim is 140% higher for a frequent claimant; filing of a trial date is 30% higher for a frequent claimant; entering of a default judgment is 43% higher for a frequent claimant. Ranges of 30% to 140% are a concern to some members of the committee, and perhaps all of us; it certainly is a concern of mine.

These people are seeking justice, which I see some difference in quite readily as opposed to applying for a licence to drive a motor vehicle, for example. In my riding, I've been approached by small businessmen and businesswomen who are trying to seek justice and claims through Small Claims Court and they are telling me they use this quite often. I have great difficulty in having constituents anywhere in Ontario having to pay a higher fee simply because their access to justice is required more often than someone else's.

Do you have a comment about people who are seeking justice being charged more because they happen to require that more often than, say, another individual?

The Chair: Mr Hoy, if I may, I'm going to ask you to redirect your question a little bit because, unfortunately, we're not able to deal with the merits of it. It's a question of whether or not, in this case, your constituents see that as a penalty for frequent use. That's the issue we're debating.

Mr Hoy: I'll rephrase my question. Indeed, these people do see it as prohibitive and a penalty. You give three different examples in your answer to the committee, but I believe, as do my constituents, that this is indeed a penalty. If these increased fees are not a penalty, what would you describe them as, what would you characterize them as?

Ms Paulseth: We believe that the fees established under the administration of justice are an attempt to recover a proportion of the cost of providing service to the public. I can understand that your constituents see that \$145 certainly is a significant amount of money with respect to a claim. But the service provided in Small Claims Court, where the jurisdiction for that court has risen over the last 20 years to provide a faster, more informal service, is still being heavily subsidized by the taxpayers.

1020

In most jurisdictions in Ontario, the Small Claims Court can provide a default judgment or a hearing following a dispute in the courts within six to nine months, and that is substantially better than the higher courts, the superior courts. We still believe this is a people's court and the effect of the amount of the fee has not been to reduce claimants in the system at all. That's our only response. I'm sorry.

Mr Gilles Bisson (Timmins-James Bay): Specifically to the terms of reference of our committee, I am going to go through three of them and why I think this actually is a violation of the standing orders of this committee.

The first regulation says, "Regulations should not contain provisions initiating new policy...." What in effect we're doing here is initiating a new policy when it comes to frequent users of the Small Claims Court. So that would be my first argument. A little bit later I'll get to the differentiating between an actual person and a legal person. We'll get into that later. But that's the first thing: This committee's regulations say "should not contain provisions initiating new policy." I would consider trying to levy an additional user fee to frequent users of the court as a new policy. That would be my first argument.

Section (vi) says, "Regulations should not impose a fine, imprisonment or other penalty." I think it just leads back into the first point that I made, which is that what you're trying to do here, in effect, is to create a new fine or a new penalty for frequent users of the court. I see that as an infringement—not an infringement; I guess that wouldn't be the right word. But I see that in contradiction to what the standing orders clearly say that you're allowed to do, and that's why this issue has been flagged.

The last one, section (viii), says, "Regulations should not impose anything in the way of a tax (as distinct from

fixing the amount of licence fee, or the like)." We can get into the argument about a tax is a tax is a tax, for Mr Murdoch and others who were here prior to 1995. I just want to make sure the Premier and the cabinet live up to their commitment they made between 1990 and 1995, which is, "We view user fees the same as any other tax in the province of Ontario." Those are the words of the Premier: "A user fee is a tax." If I'm to believe the Premier—and I have to, because he has to tell the truth in the House; he can't lie—this is a tax. Therefore, he is taxing frequent users of the Small Claims Court system and that, to me, is a clear violation of our standing orders.

The other point I want to make—this is a fairly interesting argument that the ministry brings before us, if I can have your attention. They talk about the difference between an actual person versus a legal person, meaning that we're going to have a differentiated fee based on that sort of definition: an individual who goes to Small Claims Court because my neighbour did whatever versus a person who operates a business and is trying to recoup bad credit.

It's interesting that you bring that argument, because what I see it doing is arguing against what you're trying to do, because again you're applying a differential to those who are defined as legal persons. Again, I see that in contradiction to the standing orders.

It is clearly a new user fee—or tax, as Mike Harris likes to call it—that we're applying to people who are frequent users of the system. I see that as a creation of a new user fee or a new tax, and I see it in violation of this. I'm just interested in what your comments are, or maybe research, if they want to make comments.

Ms Paulseth: I don't know that there is any more we could add. Sorry.

Mr Bisson: You agree with me, then; that's the point.

Ms Paulseth: We don't agree with the honourable member, but thank you for your question.

The Chair: Are there any questions from the government bench?

Mr Gerry Martiniuk (Cambridge): I'm just curious. Perhaps you can educate me in regard to the fees paid in—Superior Court? They keep changing the name.

Ms Paulseth: Yes, that's true.

Mr Martiniuk: If I recall, to initiate an action was about \$300.

Ms Paulseth: It was at one point. The fee now in Superior Court to file a claim of over \$6,000 is \$157. To file a defence in the Superior Court is \$125. Further claims range between \$90 and \$157 for steps in a Superior Court action. I believe the fee you may be referring to is to set a matter down for trial, which is almost \$300. It's \$293, and the current tariff in Small Claims Court is \$100, or \$130 for a frequent claimant.

Mr Martiniuk: To set an action down, to get to a trial in Superior Court, the fees would run over \$500.

Ms Paulseth: Oh, absolutely.

Mr Martiniuk: Would one say that fee covers the cost of administration—I'm not talking about the trial now—of the action?

Ms Paulseth: Absolutely not. It does not in any way come close to recovering the cost.

Mr Martiniuk: Let's just deal with the fees and equate that. Are the administration costs in Small Claims Court enormously lower than they are in the Superior Court?

Ms Paulseth: No, sir, they're not.

Mr Martiniuk: I see. So when we establish a fee for frequent users, does that in any way cover the administration costs of the court?

Ms Paulseth: No, sir, they do not.

Mr Martiniuk: We have established a fee for every-one other than non-frequent users, in effect, looking at the converse of what we've been discussing. What we're doing is giving a break, as I understand it, to ordinary people who are not frequently in court, who are seeking justice.

Ms Paulseth: Absolutely, that was our intention.

Mr Martiniuk: Otherwise we could have just, I assume, put a blanket fee over the whole thing as the frequent users would pay?

Ms Paulseth: That's correct.

Mr Martiniuk: Part of the policy analysis was to ensure that the ordinary citizen of Ontario who was not using the courts as a collection agency frequently would have access to it without being penalized by higher fees.

Ms Paulseth: That's absolutely correct.

Mr Martiniuk: Thank you.

The Chair: You've just caused me a great deal of problem in the answers to those questions.

Mr Bisson: I'm not ready to call it yet. I'd like to speak to that.

The Chair: Yes, and as Chair I have an option of speaking as well, so I'll come back to committee members in rotation.

If I hear correctly the answers to Mr Martiniuk's questions, you just indicated that frequent users—essentially agreeing with him—are a category of people who are seen as using the courts as collection agencies. So there's a judgment on who they are and what they're doing, which almost has the sounds of a frivolous use of the courts. You indicated that the lower fee was so that ordinary people could use the court without penalty. That was in direct answer to Mr Martiniuk's question. As I look at the letter that you have provided to us, in your own definitions the third meaning of the word "penalty" is "disadvantage, loss or hardship due to some action."

I think what the committee is struggling with here—and Mr Martiniuk couldn't have made it any clearer in that exchange—is by the classification, not of natural person or legal person, but a person who comes frequently or comes infrequently, there is an implied judgment about who that class of people is and their capacity to pay more, or perhaps the need for a deterrent for their frequent or frivolous use of the court system, if they are, as Mr Martiniuk said, simply using the court system as a collection agency.

I think the committee is going to have to grapple with whether or not, on the merits of the policy, it makes sense

to have a different fee for an individual versus a corporation, whether it be a small business incorporated or a large business incorporated, but also whether you can judge a class of persons on whether they use the courts frequently or infrequently, and whether how you've structured this constitutes a penalty.

Do you want to give a response to that, particularly about your response to Mr Martiniuk, and then I'll go to Mr Hoy and Mr Bisson.

Ms Paulseth: I did not understand the question to in any way impute a judgment upon the claimants. I understood the term "collection agency" as simply an example of the types of claimants who would be subject to the frequent user fee. That was my understanding when I heard the question and when I answered it.

The Chair: I'm sorry, but if I could just take it one further, Mr Martiniuk also said that—I'm paraphrasing—he understood the lower fee for infrequent users was to give them a break so they wouldn't have to pay a penalty. You agreed with that.

1030

Ms Paulseth: I understood him to use the term "penalty" not as a legal term but simply to elaborate upon the fact that when the ministry goes forward under regulation pursuant to the Administration of Justice Act, we must justify our fees in terms of the cost, as a proportion of the cost of providing this service, and that as fees have gone up over the years, it was felt that the fees for infrequent users should be set at a lower level in order to maintain a slightly higher level of government subsidy for individuals and small businesses, and that was consistent with the whole purpose of a Small Claims Court or a people's court.

The Chair: Thank you.

Mr Hoy: You just described a moment ago fees for Superior Court. Do they escalate with frequency of use?

Ms Paulseth: No, sir, they do not.

Mr Hoy: I suspect that the court would decide in the end whether a case was frivolous or not. I have no further questions.

Mr Bisson: Do I understand you correctly to say that the regulation has an intent to create a policy that differentiates between frequent users and infrequent users?

Ms Paulseth: The regulation does in effect differentiate, yes, at the 10-claims-per-year cut-off.

Mr Bisson: The second thing is that the policy is to initiate a policy of cost recovery.

Ms Paulseth: That is the purpose of the tariff.

Mr Bisson: Of the regulation. So the regulation that you wrote basically tries to do two things: first, to institute a policy that says, "We're going on a cost recovery basis, rather than a subsidy from the state." Right?

Ms Paulseth: I'm sorry, I don't understand the question.

Mr Bisson: I was intrigued, because you said a little while ago that the purpose of the regulation is to move the Small Claims Court to a policy where the state

generally paid the administration of the court on a cost recovery basis.

Ms Paulseth: It is not anywhere close to a cost recovery basis, sir.

Mr Bisson: I understand. But what you're trying to do is move it—

Ms Paulseth: But that's how we rationalize the fees, is to understand the proportion of revenue to costs. But across the board, it is a subsidized system.

Mr Bisson: But you're trying to recover closer to the overall costs. That's the stated purpose of your policy. I come back to the first point I made, which is the first bullet under our standing order 106(h): "Regulations should not contain provisions initiating new policy." That was my argument at the beginning, that what you're doing here is creating a policy that basically says, (1) we're going to move by way of regulation to a different mindset at the ministry when it comes to fees as a recovery of costs, rather than trying to make it sort of self-sustaining, trying to make it pay for itself; and (2) creating a policy that differentiates between frequent and infrequent users. I would also view that as an infringement against what the standing orders of this committee say. I see it as a direct violation of the standing orders.

I as a committee member—and I think the government members across the way are somewhat sympathetic to what I'm saying. Number one is that we want to make sure we don't bar small business people from having access to courts, because primarily frequent users are the ones that are trying to recoup bad credit by way of small claims. We wouldn't want to put an additional burden on the small business sector. I'm sure the government members would agree. I think it would be wise for us as a committee to say, "No, we reject this regulation as being, from what we were told initially by research, in contravention of our standing orders." Afterwards, I have one little question I want to ask the presenters for the government members to comment on.

The other thing is in regard to the fee itself. Did I understand you correctly to say that the fee for individual users went down as a result of this policy?

Ms Paulseth: No, sir.

Mr Bisson: OK, because that was the impression I think people were getting in your response to Mr Martiniuk's question, which was that your policy was to lower the fees for individuals. I just want the record to show that fees did not go down for individuals as a result of this; in fact, they went up. So let's be clear.

Ms Paulseth: I'm sorry. In 1993, the differential fee was based on the amount of the claim. So, for example, under \$1,000 was a \$35 fee, and \$1,000 to \$3,000 was a \$50 fee. When the increased fee schedule came in, in 1997—the issue at hand, I believe—infrequent users' fees did not change from \$50. The rationalization brought in the frequent user term.

Mr Bisson: What is the fee now, just out of curiosity?

Ms Paulseth: It remains at \$50 for infrequent users and it increased in the year 2000 to \$145 for frequent

users. But infrequent individuals and small businesses have remained at \$50 since the early 1990s.

Mr Bisson: The point being that they didn't go down.

Chair, can I ask for a very short recess? Members would know that we have school tours that come in at this time of the year. I've got to go and take a picture with them, and I'll be right back. I don't want to lose this particular part of the debate, so could I ask for a five-minute recess?

The Chair: Is there unanimous consent for a five-minute recess? Agreed.

The committee recessed from 1036 to 1045.

The Chair: At this point we can continue with any questions that members have for ministry representatives who are here, and if I could ask you to keep debate separate. We can have a discussion following that, but I don't want to take more of the ministry's time than is necessary.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): Thank you for the presentation. As we discussed briefly, I do agree with the principle, but I just want to know the mechanism of how you know who's a frequent user. When they apply for the small claim they usually go in with one claim at a time. They go to the window, if my memory serves me right, they present this claim and the clerk or whoever is there says, "This is the fee." Then they go back the next day and they go back the next day. How do they know that 10 numbers have been hit, and is it 10 per year?

Ms Paulseth: Records are kept by the court staff. They keep a record of all the claimants, and once a claimant has filed 10 claims in a calendar year, then the claimant is charged the higher fee for the remainder of his or her claims. So the first 10 certainly fall under the \$50 infrequent user, and then it is over 10 that they are charged the higher fee. It starts over again the next calendar year. It is now \$145.

Mr Gill: Are they using the same wicket or the same window or the same place, or can they be going anywhere in Ontario and the record is still there?

Ms Paulseth: I think it is just in the same court; it's kept in the same court.

Mr Gill: What if they go to a different court?

Ms Paulseth: I don't think we are able to track that currently, sir.

Mr Gill: Because these companies or these people who are using it frequently are not only accessing one location?

Ms Paulseth: That's absolutely true, yes.

Mr Hoy: Would you explain the rationale why you chose those persons who filed 10 or more claims in a year? What was the rationale for the number 10 as opposed to 12 or eight?

Ms Paulseth: To be honest, I don't actually recall what the various numbers were that were considered prior to 1997 and going forward with that regulation, but I can tell you what percentage of the claims in 1999 fall under the frequent user, and that was 19% of the claims filed.

Mr Hoy: Would you describe 10 as arbitrary?

Ms Paulseth: No, I can't say, sir. I'm sorry.

Mr Bisson: It's 19% of claims that are 10. Would you know, for example, if that number were 12, the percentage of users? Do you have any information like that? If it's 19% at 10, at 15—you don't have that breakdown?

Ms Paulseth: I'm sorry, we don't.

Mr Bisson: It would have been nice to see.

The other thing, of the 19% who are the frequent users, I take it by and large most of those are small business.

Ms Paulseth: No, sir. The frequent users are department stores, banks and credit agencies. They form the largest majority of frequent users. The claims are primarily found in the high-volume urban courts, and primarily Toronto.

Mr Bisson: I'm coming back at it from my experience in small business. In our court in Timmins, the people who tended to be frequent users were actually the small, independent owners, not so much the chains. Of course, I've been out of business for 15 years, so it might have changed over the years, but I know that the people who were utilizing the courts at the time I was using them were by and large small, independent owners who were trying to recoup bad credit. Where are these people going? Are they not doing credit any more?

Ms Paulseth: Primarily they send those to credit agencies now to enforce them. That is my understanding.

Mr Bisson: That's not what I'm getting. I went back and I talked—

The Chair: Mr Bisson, I'm going to ask you again to try and stay to the regulations issue. It is important to have the background information of to whom it applies, but again, although I think all of us would like to talk about the merits of this, that's not within the purview of the committee.

Mr Bisson: What I'm trying to get a handle on is what percentage of usage the small businesses are in that 19%. What's the percentage that is small business? That's what I'm trying to figure out, because that's basically who we're trying to protect here. Do you have any stats within the 19%?

Ms Paulseth: I don't think we have that information. We could try to go away and see if we could get that information in our sort of current manual system and provide it to the research officer if we could get it.

Mr Bisson: My next question will be to legislative counsel whenever we get a chance, whenever that's appropriate. I want to ask a regulatory question about our purview to make a differential.

The Chair: That's fine. We will come back to that. Just a follow-up to that question: You indicated that most small business would redirect their collections for a bad debt to a collections agency. In the exchange earlier, did I understand that collection agencies are in part one of the groups under the frequent users?

Ms Paulseth: Yes, that's my understanding.

Mr Bill Murdoch (Bruce-Grey): I just want to clear the record here that I don't think there's anybody, one

person, we're trying to protect here. We're trying to protect everybody. So I don't think you want to get that on the record, saying it's just small business. We're trying to protect everybody.

Mr Bisson: I do.

Mr Murdoch: That's not the point, though. You're wrong.

Mr Bisson: I want to be clearly on the record as wanting to protect small business. The big guys can look after themselves. They've got the money to do that, quite clearly.

Mr Murdoch: I see.

Mr Gill: Just a question: Have you had any representation from these 19% of people saying that they're going to be coming up with any hardship? Have you had any correspondence from them?

Ms Paulseth: No, sir, not to my knowledge.

Mr Gill: So they are pretty well saying those are the new rules and they're going to work with them.

Ms Paulseth: Yes, sir.

The Chair: That's something, as you said, you don't have information on, or are you aware there hasn't been? Before, your answers, when you weren't sure, were that you didn't have information on that.

Ms Paulseth: My understanding is limited to letters that have come into the ministry. As well, there is a group of institutional users, collection agencies, who meet with the ministry from time to time and they have not raised this issue in some time with us.

Mr Gill: Have you had any small businesses saying they're going to have hardship by this thing?

Ms Paulseth: Not to my knowledge, sir.

The Chair: I caution committee members that you're straying off the purpose of reviewing whether the regulation falls within the purview of what a ministry can do under regulation versus what they can do under law, and that's what we need to examine. Mr Bisson, you had one more question?

Mr Bisson: I just have one question again about the percentage of those people within the 19%. Do you have a breakdown of how many of them are collection agency claims?

Ms Paulseth: I don't, sir.

Mr Bisson: Is it hard to get that?

The Chair: Are there any further questions for the ministry?

Mr Bisson: Can we get that information? That's all I'm asking.

Ms Paulseth: I don't know, and I don't know what the definition of "small business" would be. You'd have to get into that kind of research.

The Chair: Are there any further questions for ministry officials?

Mr Garfield Dunlop (Simcoe North): Madam Chair, I have no problems here. I don't see any hardships.

The Chair: Are there any questions at this point, though, because I—

Mr Dunlop: It's just that I'd like you to call the question.

The Chair: I think there should be an opportunity—if you want to put a motion to call the question, we can do that. Normally, we would afford committee members an opportunity, after having questioned the ministry, to put some views on the record with respect to this and then take a vote.

Mr Dunlop: All right. That's fine.

The Chair: Thank you very much. We appreciate your taking the time and being here with us.

As Chair, I get a read of the room that people have a sense of where they're going with this, but I think it's important that you have an opportunity at least to hear from each other and put briefly on the record your thoughts about this. Once again, I'm going to ask committee members to do their best to ensure their remarks are confined to the terms of reference under our standing orders and whether or not, in your view, the ministry can in fact effect this particular action through regulation or whether that is a violation of the guidelines, and whether or not you have a recommendation of what the committee should do next.

Just so you know the options before the committee: We can decide to take no further action; we can make a second report to the House; if we make a report to the House, we can simply have a brief presentation of what we want to say, whatever it is the committee wants to say. It can contain an additional request which would be placed on the order paper and, if called by the government, is before the House for consideration. It can contain a motion with a recommendation which would be placed on the order paper and, if called by the government, would be before the House for consideration. It could contain a motion that the report be adopted if the report has a substantive motion in it, and we can get into the details of that. Once again, it would be placed on the order paper and called for debate by the House if the government called it forward.

Those are the options before us. As you speak to this, if you have an opinion with respect to whether or not the regulation falls within or outside of the guidelines and what, if anything, you think the committee should do in response to this item before us today, I would appreciate it if you would address your remarks to that.

Mr Bisson: I have a question to counsel before we get to the rotation. I'm not sure if it's to research or leg counsel. Basically, the argument here is, does the government, by way of changing regulation, have the right to do this? Is it a violation of our order? Originally, this was flagged to us because it was seen as contradicting the standing orders in the sense that it imposed a new fee. Am I correct? That's why it ended up here.

Mr Andrew McNaught: In the sense that it imposed two levels of fees.

Mr Bisson: That's right. Two levels of fees, I should say. We heard their argument and I'm not going to repeat it. Have you in any way changed your mind at all or are you still of the view, as I am, that this is quite frankly an imposition of a new fee on a different class of user?

Mr McNaught: As I mentioned a couple of weeks ago, this issue of a penalty hasn't really been raised by the committee in a number of years, so it was a bit new to us as well when we first flagged this. We simply raised it as a potential issue. As I said a couple of weeks ago, after looking at the fuller explanation provided by the ministry, I tended to side with their interpretation on the very narrow issue of what constitutes a penalty.

Mr Bisson: That brings me then to my next question, which is that if the committee is to take the view that it certainly pushes the outside of the envelope but doesn't go over the line, would it be within the orders for us to make a recommendation, if there is a differential fee applied, that it not be applied to individuals or small business people who utilize the courts? Would that be against the standing orders if I was to make that kind of recommendation?

The Chair: The committee can make any kind of recommendation they want with respect—

Mr Bisson: But I don't want to argue against the very standing orders that we're trying to figure out, if they apply or not, if you follow where I'm coming from.

The Chair: You're asking leg counsel or leg research to make a judgment call, which is what the committee has to do. If you believe this either violates the standing orders or is borderline in terms of interpretation, the recommendation could be for the ministry to correct that problem, and if there was a majority view among committee members about how that problem should be corrected to eliminate the problem of this regulation imposing a penalty, that recommendation could be put forward by the committee.

Although the committee can do anything it wants in its majority vote, what would be wrong, in my view as Chair, would be if the committee were to attempt to comment on the merit of the policy and propose a different policy because you thought the ministry's policy was not meritorious. That's the fine line we walk at this point in time.

1100

Mr Bisson: I know the direction I'll take, then.

Mr Hoy: Yes, you're quite right, Chair. We're being asked whether indeed this violates our standing orders—

Interjection.

The Chair: Could we have order? At this point, let's try and move to the discussion here.

Mr Hoy: —in two regards, one of providing two levels of fees, and secondly, does it constitute a penalty for frequent users? There are two issues in my mind.

Also in my mind, I don't think I would want to personally start to begin to categorize other persons, individuals or entities in order to somehow make ourselves feel that this is not instituting two levels of fees or somehow diluting the fact that it is a penalty by recommending that we ourselves as a committee formulate a group of persons or individuals or other entities that are exempt from the regulations. The question here is, does this provide for two levels of fees that are different, one from the other, and a penalty? I'm of the view that it is exactly

that. It is exactly providing for two levels of fees to individuals, one different from the other, and does indeed constitute a penalty.

I also put heavy weight on counsel and research officers to this committee who are impartial and non-partisan. In their view, they've come to us with their judgment that I agree with, that this issue we're talking about today does create a penalty for certain individuals and most definitely does provide for two different levels of fees.

Mr Murdoch: I just want to say I absolutely agree with him, but I think we should do it anyway.

Mr Bisson: You think we should what?

Mr Murdoch: We should pass this motion, do it. I don't think there's anything wrong with what they're asking us to do. He's right, sure, there are two different fees, but there are people who use it more often. I just think we're doing what should be done. So yes, what you just said is probably true, but let's get on with it and let's do it then.

Mr Hoy: Could I comment, please?

The Chair: Every time one of you guys speaks up, you make this more complicated for the Chair.

Interjections.

The Chair: Mr Murdoch, I need to ask you whether or not you agreed with what Mr Hoy said, that in fact the construction of this constitutes a penalty. If I may, just to try again with the committee, whether or not you agree or disagree with what the ministry is trying to do isn't the question that we get to answer. We can debate that as politicians.

Mr Murdoch: I know. We want to know whether it's a penalty thing. I don't know whether it's a penalty or not, to be quite honest.

The Chair: If it's structured as a penalty, then the ministry can't do it by regulation under the rules.

Mr Murdoch: In fact, if it is in—so it's not a penalty. It's just a matter of setting fees to charge people for a service that they get. I say let's get on with it because I think we're wasting all our time. It's damn lucky we're not getting paid \$103,000; it would be a bigger waste of time.

Mr Bisson: I am certainly sure there are a number of members in your caucus who are really pissed off right now they're not being paid \$103,000. But that's another issue.

I just want to come back to the rationale for why I think this is a violation of our policies, the standing orders of this committee. I would ask that the government members pay heed to what I'm trying to explain here and hopefully, in their wisdom, they'll vote. Number one, is this a penalty or is it not a penalty? By the admission of two government members, first Mr Martiniuk in his exchange with—

Mr Martiniuk: Excuse me, Madam Chairman. At no time did I use the word "penalty." At no time. If you check Hansard, you will find that at no time did I use the word "penalty" in any way, shape or form. I'm exactly certain about that.

The Chair: Thank you, Mr Martiniuk. I will certainly take the opportunity to review Hansard. You can count on that.

Mr Murdoch: Does it matter? He's cleared it up now. He says it isn't a penalty, so that's on the record.

The Chair: It's on the record.

Mr Murdoch: That's right. That's all you need.

Mr Bisson: My point is this: Does what's before us as a committee violate standing order 106(h)? That's the question. Part of what's germane to the point is, do we consider this a new penalty? Basically, from what I heard from the government members, from Mr Murdoch in response to Mr Hoy and from what I heard earlier from Mr Martiniuk, there is an understanding on the part of the government members that this is a new penalty being imposed on a different class of business, a different class of individuals, which are the frequent users.

Mr Murdoch: A fee.

Mr Bisson: A fee, a penalty.

Mr Murdoch: It's a fee schedule, is what it is.

Mr Bisson: If you let me work my way through this, Bill, you'll get—

Mr Murdoch: No, because you—

The Chair: Mr Murdoch, I'm going to call you to order, please. I think everyone knows where we're headed here. Let's just get there. The longer that we bicker, we won't.

Interjections.

Mr Bisson: What is the part about democracy that you guys don't like? That's what I want to know. Anyway, I can't talk about that. I have to talk to the standing orders.

What's germane to the point is, is this regulation creating a new penalty when it comes to how it deals with utilizers of the Small Claims Court? I repeat: We heard two government members today that in fact that's what it's doing. I think there's sufficient understanding within the committee that if it doesn't go over the line, it's pretty damn close to going over the line. So that's the first point.

Then I bring you to three of the bullets within standing order 106. The first one says, "Regulations should not contain provisions initiating new policy...." My argument is we're changing the policy to where now there's going to be a differential fee charged to those people who utilize the courts more frequently. I would argue that is a new policy, that is a change of policy and therefore should not be allowed, by way of the standing orders, to be accepted.

The second one is bullet point (vi), "Regulations should not impose a fine, imprisonment or other penalty." We are clearly creating a new fine in this move, so I say again this regulation is affronting standing order 106(h).

The last one, which is a bit political, Chair, and you may rule me out of order, is, "Regulations should not impose anything in the way of a tax...." I just remind you, for the record, Mike Harris deems user fees as taxes, so therefore I want to make sure Mike Harris lives up to his commitment. It's my job as an opposition member to

hold the government's feet to the fire, and I say he's breaking his own policy.

For those reasons, I think if it doesn't go over the line, it's pretty darn close to going over. At this point, Chair, if it's in order, I would like to move a motion, if I can do that.

The Chair: Yes, you can.

Mr Bisson: My motion would be that we report back to the House and we give the House one of two things that they can do. One is that they not move forward with this particular regulation in order to be able to protect small businesses and classes of individuals who use the courts, or, the other is a motion that excludes individuals and small businesses from the application of the differential fee.

The Chair: OK, there is a motion on the floor. Is there anyone who would like to speak to the motion?

Mr Hoy: I agree with the first part of Mr Bisson's motion, but I think the second part of the motion allows for a continuation to some degree of what we're seeing in terms of a penalty being there.

Mr Bisson: I'm trying to get it on both sides.

Mr Hoy: I know that you're sympathetic, Mr Bisson, as am I. But I would ask Mr Bisson if he would consider withdrawing the second part of his motion. I think it has the committee now drawing lines and getting into waters that might have us subjected to the view that we also could be putting a penalty in place for others. I think the question before us is that there not be penalties imposed by this particular ministry on any person or entity.

Mr Bisson: I see that as a friendly amendment. I just want the member to know the reason I wanted the second part of the amendment in there. It was to say if, on the one hand, we as a committee see this as going over the line but the government majority says, "No, it doesn't," then I want to use the same rule to be able to protect small businesses. I was just trying to make a point, so I'm prepared to withdraw the second part of the motion.

The Chair: As I understand it, the motion before us is for a report from committee which recommends the ministry withdraw this regulation.

Mr Bisson: That's right.

The Chair: That's what we're dealing with. Are there any other speakers to this motion? Seeing none—

Mr Bisson: Recorded vote.

Ayes

Bisson, Boyer, Hoy.

Nays

Dunlop, Gill, Martiniuk, Murdoch.

The Chair: That is defeated.

If I may, in rotation, we've been back and forth a couple of times here. Is there anyone in the government who would like to speak to the general issue before us?

Mr Dunlop: No. We just have to approve the regulation, and I move it.

The Chair: At this point in time what might be helpful is if you also indicate what you want the committee to do about it. You approved the regulation. It's not really within our purview. Essentially you want the committee to take no further action with respect to this regulation. Would that be the wording?

Mr Dunlop: Exactly.

The Chair: Thank you. That's on the floor before us.

Mr Hoy: Could you just explain what was agreed to there by—

The Chair: The motion that Mr Dunlop is placing is that the committee take no further action with respect to this item, that being the regulation from the Ministry of the Attorney General.

Mr Hoy: Thank you.

Mr Bisson: Just for the record, first of all, I'm opposed to the motion for the reasons we talked about in the last meeting and this meeting. I see this as an additional tax on small businesses and individuals who are utiliziers of the court. I would also make the point that the Ministry of the Attorney General people who were here earlier said the type of people who are utilizing the Small Claims Court more than 10 times by and large are collection agencies. I remind the committee, who are the customers of the collection agencies? Often it's small business people. Therefore, the \$145 new higher fee is going to be passed on to small business. It's going to be in the bill that they get from the collection agencies when the matter is dealt with at the court. I see this as an addi-

tional burden on the small business community. They're under enough pressure as it is now to make ends meet.

As an owner of a small business in the past, and both my parents ran small businesses all their lives, I just want to do everything I can in order to protect that particular class of business because it's becoming increasingly more difficult, in light of global competition and competition from the bigger chains. I'm just very disappointed that the Conservatives again have sided with big corporations and not individual small business people.

Mr Dunlop: Oh, come on. Get real.

The Chair: Is there any further debate with respect to this motion? Seeing none, is there a request for a recorded vote?

Mr Bisson: Recorded vote.

Ayes

Dunlop, Gill, Martiniuk, Murdoch.

Nays

Bisson, Boyer, Hoy.

The Chair: The motion carries.

Is there any other business that members—

Interjection.

The Chair: Thank you very much, Mr Murdoch. I had a momentary lapse there. Is there any other business that members want to bring forward? Seeing none, a motion to adjourn? Moved. Adjourned.

The committee adjourned at 1113.

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Substitutions / Membres remplaçants

Mr Gerry Martiniuk (Cambridge PC)

Also taking part / Autres participantes et participants

Ms Lois Lowenberger, counsel, civil justice reform, Ministry of the Attorney General

Clerk / Greffière

Ms Anne Stokes

Staff / Personnel

Mr Andrew McNaught, research officer, Research and Information Services

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regulations and private bills

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS

Wednesday 11 October 2000

The committee met at 1002 in committee room 1.

1274187 ONTARIO LIMITED ACT, 2000

Consideration of Bill Pr25, An Act to revive 1274187 Ontario Limited.

The Chair (Ms Frances Lankin): If we could call the meeting to order. I was looking for the sponsor of the first bill and he has just arrived, so that's great.

The first item of business for us to deal with is Bill Pr25, An Act to revive 1274187 Ontario Limited. The sponsor is MPP David Young. The applicant is Pino Tarabelli, the president, and Douglas H. Hancock is the counsel. Mr Young, would you like to introduce the applicants who are here.

Mr David Young (Willowdale): Absolutely. The individuals you've just mentioned are seated beside me and I think are in a position to explain the circumstances surrounding the need for this bill. If I may say by way of introduction, the genesis of it is really very much an oversight of a representative of a predecessor company. Perhaps the best thing to do, with your permission, would be to turn it over to the deponents and they can speak to the reason that this bill is required.

The Chair: Gentlemen, would you identify yourselves for the purpose of Hansard.

Mr Douglas Hancock: Good morning. My name is Douglas Hancock. I'm a solicitor.

Mr Pino Tarabelli: I'm Pino Tarabelli, who submitted the bill.

Mr Hancock: By way of background, Mr Tarabelli and two partners carry on business in a company called Azimuth Three Enterprises. A few years ago we, in conjunction with some tax claim with their accountants, incorporated three companies and each shareholder held their shares through a numbered company. At the time, Mr Tarabelli was away on holiday, so I incorporated the company in my name and subsequently transferred the company over to Mr Tarabelli when he came back.

About a year later, in filing a tax return, the tax return indicated that Mr Tarabelli was the sole director. However, a form 1, a notice of change, had not been filed with the Ministry of Consumer and Commercial Relations. A demand was sent out to the company to file a form 1 and a follow-up demand was made, which, through inadvertence, was never in fact filed. As a result,

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the corporation was dissolved for cause, which creates difficulty in terms of the whole issue of revival.

The company has assets. It has been used in the tax planning. It holds shares in the operating company. It also holds shares in the company that owns the real estate. It was entirely through inadvertence that the form 1 wasn't filed, and hence the bill today.

The Chair: Are there any further comments that you wish to put on the record? OK. I'm going to ask the parliamentary assistant if the ministry has any comments to make.

Mr Brian Coburn (Ottawa-Orléans): No, Madam Chair. To our knowledge there's been no opposition and no objections.

The Chair: Committee members, do you have any questions? Any comments on the bill? Are you ready to vote, then? A very docile crowd today.

We're ready to vote on Bill Pr25, An Act to revive 1274187 Ontario Limited, sponsored by Mr Young, MPP. There are no amendments to be placed.

Shall sections 1 through 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? OK.

Thank you, gentlemen. It seems quite perfunctory, but we appreciate your coming, and your presence on this is very helpful.

CITY OF TORONTO ACT
(TRAFFIC CALMING), 2000

Consideration of Bill Pr2, An Act respecting the City of Toronto.

The Chair: The next item before us is Bill Pr2, An Act respecting the City of Toronto, traffic calming. The sponsor is Marilyn Mushinski, MPP. I would indicate to committee members that the following two bills, Pr11 and Pr12, are also acts respecting the city of Toronto dealing with assessment issues, also sponsored by MPP Mushinski. Ms Mushinski is not present today. Is the committee content to continue without the sponsor being present at this point in time? OK.

On behalf of the applicant we have Mary Ellen Bench, counsel from the city of Toronto. Ms Bench, if you want to address the committee with respect to these matters.

Ms Mary Ellen Bench: Good morning, Madam Chair and members of committee. My name is Mary Ellen Bench. I'm director of municipal law at the city of Toronto. We have three bills before you today. I would ask the committee's indulgence, if we could defer these matters to be dealt with next week when there is another matter that the city of Toronto has. Two of the issues today relate to assessment matters and are similar to the one that is being discussed next week. One of the issues is a traffic calming issue. On the traffic calming matter there was an amendment worked out late yesterday that I think needs proper consideration by ministry staff.

Unfortunately, this is the first application that the new city of Toronto had, and we'll need to speak to our sponsor a little bit better before we're ready to proceed. With notice coming out last week in the middle of our council meeting, things have gotten a little muddled, I think.

The Chair: Would you say that council is pre-occupied with something else right now? A little traffic calming in the council chambers might be helpful.

Ms Bench: If I could request, next week we will definitely be prepared to proceed with all of these matters.

The Chair: We'll indicate to you that there is one item scheduled to proceed next week already, in addition to the fourth item from the city of Toronto. I have no anticipation of any problem, but you never know with any given bill whether it may take more time or less time. Just so you know, you may come and find that the

committee will deal with some and perhaps not all. We do our best to get through the agenda.

Ms Bench: Yes. I understand that.

The Chair: You're aware of that.

Are there any concerns from the parliamentary assistant about deferring the item?

Mr Coburn: None. I think it's a good idea at this stage.

The Chair: Any concerns from committee members?

Mrs Claudette Boyer (Ottawa-Vanier): This is only dealing with one more person, right?

The Chair: No. This would deal with three items from the city of Toronto. To be clear, those are bills Pr2, Pr11 and Pr12.

Mrs Boyer: OK. No problem.

The Chair: Could I have a motion from a committee member to defer those three items to a later agenda?

Mr Garfield Dunlop (Simcoe North): So moved.

The Chair: A seconder? Seconded, Mr Gill. Thank you. Any debate?

All those in favour, please indicate. Those opposed? That's carried.

Thank you, Ms Bench. We appreciate your coming today.

Any other business that members have to put on the agenda? Seeing none, can I have a motion to adjourn? Mr Gill, thank you. All those in favour? Thank you. The meeting is adjourned.

The committee adjourned at 1010.

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STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 18 October 2000

Mercredi 18 octobre 2000

*The committee met at 1000 in committee room 1.*MUNICIPALITY OF
WEST PERTH ACT, 2000

Consideration of Bill Pr17, An Act to change the name of The Corporation of the Township of West Perth to The Corporation of the Municipality of West Perth.

The Chair (Frances Lankin): I call the meeting to order. The first item of business before us is Bill Pr17, An Act to change the name of The Corporation of the Township of West Perth to The Corporation of the Municipality of West Perth. The sponsor is MPP Bert Johnson. Mr Johnson, welcome. Would you like to introduce the applicants who are here with you and say a few words?

Mr Bert Johnson (Perth-Middlesex): I would, please. Ladies and gentlemen, as the member for Perth-Middlesex, I'm delighted to be here this morning to sponsor Bill Pr17, An Act to the change the name of The Corporation of the Township of West Perth to The Corporation of the Municipality of West Perth. I'm also pleased that municipal representatives from West Perth could be here this morning and speak to the standing committee. This morning I'm joined by deputy mayor Bert Vorstenbosch, also the chair of ROMA, the Rural Ontario Municipal Association, and Mrs Patricia Taylor, clerk-treasurer. I know they will be able to answer any questions you may have. Thank you for your time this morning. I'd like to ask if Pat or Bert have statements. They don't think so, so if you have questions I think they would like to get on with things.

The Chair: Perhaps one of you might just quickly outline the details of the bill for committee members.

Mr Bert Vorstenbosch: The reason we asked for the change from "township" to "municipality" is because we are three rural municipalities and one urban municipality, and we felt that "municipality" would identify the three rural and urban much better than "township," which we are now. We did get one letter that wasn't too much in favour of it, but when we explained the fact that we weren't taking away the rural designation, we were just adding "municipality" rather than "township" to the whole thing, she kind of agreed that "municipality" was a better word to identify all of West Perth.

The Chair: OK, thank you. It's pretty straightforward. Are there any questions from committee members? Is there any debate between committee members? I think not. As I said, it's pretty straightforward.

Are committee members ready to vote then?

Bill Pr17, An Act to the change the name of The Corporation of the Township of West Perth to The Corporation of the Municipality of West Perth, sponsored by Mr Johnson, MPP. Are there any amendments that members want to put forward at all? No? OK.

Shall sections 1 to 4 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? It shall be done.

Thank you very much. Sorry that formality meant you had to come all the way down to Toronto to see this through, but we appreciate your attendance in case there had been any questions. I will be reporting this bill back to the House this afternoon.

Mr Vorstenbosch: Thank you very much. We always enjoy coming to Toronto, especially to Queen's Park.

The Chair: Just make sure Bert takes you lunch, OK?

Mr Vorstenbosch: We will. We'll eat our best.

The Chair: Committee members, I'll just indicate that we're waiting for the sponsor of the next group of bills, so at this point perhaps we'll take a five-minute recess.

Mr Brian Coburn (Ottawa-Orléans): Madam Chair?

The Chair: Just before we do that, yes, parliamentary assistant?

Mr Coburn: It's been indicated that the sponsor will be unable to attend. I would seek consent to continue without the sponsor.

The Chair: Is there consent to continue without the sponsor? OK, we can continue then.

CITY OF TORONTO ACT
(TRAFFIC CALMING), 2000

Consideration of Bill Pr2, An Act respecting the City of Toronto.

The Chair: The next item before the committee is Bill Pr2, An Act respecting the City of Toronto (Traffic Calming). Marilyn Mushinski, MPP, is the sponsor, and with the committee's agreement we will continue in her absence. The applicant, the city of Toronto, is represented today by Mary Ellen Bench, counsel. Ms Bench, with you today is?

Ms Mary Ellen Bench: Andrew McBeth of the city's traffic division.

The Chair: Do you have any opening remarks with respect to the bill?

Ms Bench: Yes. Good morning, Madam Chair and members of the committee. In June 1994 the former city of Toronto obtained special legislation, Bill Pr43, that allowed the city to impose traffic calming measures, including 30-kilometre-per-hour speed limits within the former city of Toronto. That legislation was considered to be on a trial basis and had a sunset clause and the legislation expired in 1996. It was renewed for a further three-year term and again expired then in 1999.

The purpose of today's application is to ask that that legislation be reinstated in the city of Toronto and extended to the new boundaries of the city of Toronto post-amalgamation. The legislation has been very effective in terms of dealing with traffic issues through neighbourhoods in the city.

Mr McBeth has a technical report establishing the benefits of that which can be distributed, and he will be prepared to answer questions with respect to the studies that have been undertaken in terms of that legislation. The traffic studies do confirm the need for the legislation, and accordingly the city is asking that the legislation apply to the entire city of Toronto as incorporated on January 1, 1998, and that the city be permitted to pass bylaws to designate streets that have traffic calming measures in effect and to designate streets as having 30-kilometre-an-hour speed limits in these areas. Because of the lapse in time, we're also asking that the legislation be grandparented. However, as drafted, we recognize that there is a concern with the grandparenting in the sense of offence provisions. An amendment has been proposed, which we've agreed to, that will eliminate that concern. We can advise you that there have been no efforts whatsoever to enforce this in terms of charging anybody, so it's not an issue at all.

We can distribute the traffic studies, if you wish.

The Chair: Yes, if you would give them to the clerk of the committee, please, they can be distributed. Mr McBeth, would you like to address at all the papers being distributed so committee members are aware?

Mr Andrew McBeth: With some discussions with Mr Terry Short from the Ministry of Transportation, who is here today, I think more than a year ago, we decided that technically it would be useful to study four streets that had 30-kilometre-per-hour speed limits and traffic calming. We decided what those streets would be. They represented a variety of traffic calming measures in the city. Subsequent to that meeting, we reviewed those four streets for traffic speed and traffic volume, and we've reported on those studies in this paper. The other thing we did was to look at the collision history on those streets to see if there's been a reduction in collisions.

We found that the traffic speeds reduced significantly. Typically, 10 kilometres per hour was the average speed reduction on each of those streets with traffic calming. It depended a little bit on what kind of traffic calming as to how extensive the speed reduction was.

With the collision analysis, we found that prior to the implementation of traffic calming on these four streets

there were 12 injury collisions over a two-to-three-year period. For a comparable period after the traffic calming was installed, there were seven injury collisions. So we've reduced the collisions from 12 to seven. But we recognize that it is rather a small sample—it's only four streets, it's only two or three years—and I think perhaps the jury is still out. But at least the evidence appears to be in the right direction, a reduction from 12 to seven.

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In addition to demonstrating that the traffic calming has been effective in reducing the speeds, it's our position that that should be reinforced by an appropriate speed limit. Rather than just having a warning sign that says 30, we're saying that a regulatory sign that says 30 kilometres is required, and most of the traffic is doing less than 30 kilometres per hour. We've actually got better compliance with the speed limit on these streets than most streets that have a 40-kilometre-per-hour speed limit.

At this point, that's probably all I need to do to capture the summary of the report. I'm very happy to answer any questions.

The Chair: Ms Bench, the amendment that you're hoping will be moved essentially deals with the period after the existing bylaw expired and before this act comes into force, saying that no one would be guilty of an offence during that period of time, even though there have been no charges laid during that period of time. It's for charter purposes?

Ms Bench: For charter purposes, it clarifies that fact, yes.

The Chair: Is there a committee member prepared to move this amendment?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): I move that section 6 of the bill be amended by adding the following subsection:

"Prohibition

(2.1) Despite subsection (2), no person shall be found guilty of contravening the bylaw if the contravention occurred after June 26, 1999 and before the day on which this act receives royal assent."

The Chair: Thank you, Mr Gill. I will have you read that into the record one more time when we come to the section for voting.

Is there any further comment from the applicants?

Ms Bench: No.

The Chair: Parliamentary assistant, are there comments from the ministry?

Mr Coburn: We have no objections to this bill. Mr Guilfoil is here from MTO, and they have no objections to the bill or the amendment.

The Chair: Are there any questions from committee members?

Mr Gill: I'm wondering if such a move has been undertaken before. Is there any place else in the city where this has happened or has been granted?

Ms Bench: The former city of Toronto had this legislation as far back as 1994, but it was considered to be on a trial basis, so it had a three-year limit to it. That's the

only experience we've had with it, in the former city. Because it's worked well, we're hoping to reinstate it and expand it to the new city.

Mr Gill: These four streets were chosen according to what criteria?

Mr McBeth: There are a lot of streets with the 30-kilometre-per-hour speed limit, probably 30, 40 or 50 streets. Of the streets we chose, two had speed humps on them. One of them was the Balliol Street demonstration traffic calming project, which was part of the reason for the first legislation back in 1994. The traffic calming has been in place on that street for six years now. The other street had what's called a chicane, where there's a road narrowing on one side of the road immediately followed by a road narrowing on the other side of the road, so that to drive it you have to meander through there; and that's another way of calming traffic. There was a variety of techniques that we wanted to test, and as I say, we discussed this with our colleagues at the Ministry of Transportation to ensure that this would be a representative sample from a technical point of view to demonstrate the characteristics and effectiveness of traffic calming. But there were many more streets we could have looked at.

Mr Gill: Is this in agreement with the residents of the streets? Is it driven by them?

Mr McBeth: Yes, it's resident-driven, and we go through a process with residents. In fact, we have a polling requirement. To put in speed humps, for example, which is one of the treatments that's perhaps most commonly seen around the streets of Toronto, we require 60% of residents to vote in support, 60% of those who respond to the ballot. The ballots are usually very well responded to, much better than a municipal election. People take a great deal of interest in the events on their streets, particularly if there's a proposal for traffic calming, which does come from, usually, a neighbourhood street committee who work with traffic engineering staff to develop a proposal, a plan for that particular street. It's that plan that's circulated among the residents so people know what they're voting for. We require 60% support in order to go ahead with that.

Mr Gill: And you had 60% support?

Mr McBeth: Yes.

Mr Gill: And 40%, I suppose, said no?

Mr McBeth: When I say 60%, I mean 60% of valid polls cast. They get a yes or no vote. If there are spoiled ballots, we don't count those in either case, but typically there are very few spoiled ballots. It's usually yes or no, I want this or I don't want this. That's the question: do you support the proposal? Do you oppose the proposal?

Mr Gill: I'm surprised that such a high number said no. It's a good measure, I think.

The Chair: Are there any further questions or comments from committee members? No?

Are members ready to vote, then?

Shall sections 1 through 5 carry? Carried.

Section 6: Mr Gill, you've indicated an intention to move a motion. Would you read that into the record, please?

Mr Gill: I move that section 6 of the bill be amended by adding the following subsection:

"Prohibition

"(2.1) Despite subsection (2), no person shall be found guilty of contravening the bylaw if the contravention occurred after June 26, 1999 and before the day on which this act receives royal assent."

The Chair: Shall the amendment carry? Carried.

Shall section 6, as amended, carry? Carried.

Shall sections 7 and 8 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill, as amended, to the House? It shall be done.

CITY OF TORONTO ACT (TAX DEFERRALS), 2000

CITY OF TORONTO ACT (GRADUATED TAX RATES), 2000

CITY OF TORONTO ACT (TENANT PROTECTION), 2000

Consideration of:

Bill Pr 9, An Act respecting the City of Toronto;

Bill Pr 11, An Act respecting the City of Toronto;

Bill Pr 12, An Act respecting the City of Toronto.

The Chair: The next item of business before us. We have Bill Pr9, City of Toronto Act (Tax Deferral); Bill Pr11, City of Toronto Act (Graduated Tax Rates); and Bill Pr12, City of Toronto Act (Tenant Protection). Again the sponsor is Mrs Mushinski, MPP, who is not here, but with the committee's agreement we will carry on in her absence. There is agreement? Thank you.

The applicant is the city of Toronto, again represented by Ms Mary Ellen Bench, counsel. Ms Bench, could you introduce who's with you today.

Ms Mary Ellen Bench: With me today is Ms Giuliana Carbone, who is the director of revenue services at the city of Toronto.

The Chair: It's my understanding that you would like to present these three bills together to the committee as a package?

Ms Bench: Yes. I think it's easier that way.

The Chair: Go ahead.

Ms Bench: The next three bills basically were passed by city council request at a special meeting held on July 21 and 23, 1998, which was when council determined how to best implement current value assessment in the city of Toronto. There was a fourth bill, Pr10, which has been withdrawn because of a timing issue, but these three bills resulted from that discussion.

The three bills are somewhat related. They are a little bit different in terms of the relief they're asking for.

Bill Pr9 is requesting authority for the city to provide for deferrals of property tax for all low-income homeowners in the city of Toronto and that that be made retroactive to January 1, 1998, when the current value

assessment came in. It is also asking for the right to defer or cancel or otherwise deal with assessment-related tax increases borne by low-income seniors, as a way of addressing the needs of that group of citizens in this city, many of whom tend to be property-rich but cash-poor. That was a concern that the city recognized and wanted assistance and the ability to assist residents in.

I would also note, in respect to this matter, that this is not a new concept. In the former cities of North York, the borough of East York, and the city of York, similar legislation existed that allowed for tax relief for low-income seniors. What the city is requesting here is that the current legislation be expanded so that we're able to provide this kind of relief for low-income seniors and, in terms of deferral, for low-income persons in the city in general.

1020

With respect to the next application, Bill Pr11, this application again relates to the implementation of current value assessment. Council has requested that the city be able to establish bands of assessment for the residential-farm class of properties in the same way they're able to establish those bands of assessment now for the commercial-industrial. So instead of having one property class tax class for residential, we'd be allowed to have three property classes and set different rates for them. Council has seen a benefit, again as a result of their discussion on the current value assessment implementation, to making that request.

With respect to all three of these applications, the city has not received any objections to these applications and would hope that they would be supported.

The final application, Bill Pr12, is part of the implementation and the legislative changes introduced when current value assessment came in. There was a requirement in the Tenant Protection Act that of landlords received a decrease in their taxes as a result of current value assessment of 2.49% or greater, that was required to be passed on to tenants. Less than that was not required to be passed on. In the city of Toronto, because of the large number of tenants and the impact this has had, council again, as part of its discussion, has requested that that legislation be amended for the city of Toronto to allow any tax decrease to be passed on to tenants so that tenants receive the benefit. Council has indicated that its concern is that the tenants are such a huge group of the population in the city and they're taxed higher than single-family homeowners, so they would like them to get whatever relief is possible to be passed on to them.

Those are the three applications and council's reason for the request. If you have technical questions, Guiliana and I would certainly be happy to answer them for you the best we can.

The Chair: Has the parliamentary assistant to the ministry any comments?

Mr Coburn: The government is opposed to Bills Pr9, Pr11 and Pr12. Basically these private bills would treat residents of Toronto differently from the residents across the province of Ontario. Our view is that if this is some-

thing that should be dealt with, it should be dealt with at large right across the entire province and should be brought forward in the appropriate manner to the minister. On that particular basis, we are opposed to all three.

With respect to Bill Pr9, to provide something under an enriched tax relief program retroactive to 1998 would cause an increase in the tax burden of other taxpayers in the residential-farm property class to offset the cost of targeted relief.

In respect to Bill Pr11, the assessed value of residential property already recognized the characteristics of a home's value in the assessment methodology. The myth that it increases property taxes on higher-assessed homes because of implied increased ability to pay is not something we support.

In short, because it is site-specific, so to speak, and not taking into account the residents across the breadth of the province, we're not in a position to support it.

The Chair: Thank you. Committee members, are there any questions or comments?

Mr Pat Hoy (Chatham-Kent Essex): The parliamentary assistant has answered the question that I had, that this does seem to be just for one city in the province, and I can understand your concern about that. Is there any indication from the government that you would be amenable to providing these kinds of deferrals or considerations for lower-income persons across the province, so that Toronto can avail itself of this type of action, as well as other cities and towns or villages?

Mr Coburn: If it was brought forward in a proper format so the ministry could analyze it and then respond to it in the proper context, it is something that certainly the minister would take a look at.

The Chair: If I might, I have a question for the parliamentary assistant. In the current value assessment legislation, were there not provisions for municipalities, for example, to set caps on the implementation or the increase, for example, in commercial-industrial tax rates that gave a discretion to individual municipalities?

Mr Coburn: That's correct.

The Chair: How does this differ, then, in terms of giving a discretion to an individual municipality with respect to deferral or spreading the tax voted on in a different way?

Mr Coburn: It would have to be looked at in more of a global perspective across the province rather than making a decision based on the parameters around one specific geographic area, for one reason or another. If it's brought forward in the proper format, there could be some in-depth analysis applied to it so it could be debated in the proper format.

The Chair: Any further questions or comments from committee members?

Mr Hoy: I have one, at least one. In terms of Bill Pr11, a municipality would have its classes. It was my understanding that that was allowable, that municipalities could create classes for the purposes in Pr11 through previous legislation.

Mr Coburn: The mitigation tools with respect to graduated tax rates was respective only of business and industrial-commercial properties and not in the residential sector. The assessed value of a residential property already recognizes the characteristic of the home's value with respect to the marketplace. By imposing graduated tax rates on residential properties, that would penalize at a disproportionate rate the higher-assessed homes, without a supporting justification particularly, such as the size, the ability to achieve economies of scale, as in the case of business properties.

The Chair: Ms Bench, did you have any other comments you wanted to place on the record?

Ms Bench: The only additional comment I'd like to place on the record is to reiterate with respect to Bill Pr9's tax relief for low-income persons and the comments of the committee members that it should be a global rather than a local thing is just to remind the committee that it has been done locally before. It was done in North York, East York and York, for example, within the confines of the current city. It's something that maybe would be good to do in a global context, but there is precedent for doing it on a local basis as well.

The Chair: Are committee members ready to vote?

OK, we will be dealing first with Bill Pr9, An Act respecting the City of Toronto, sponsored by Mrs Mushinski, MPP.

Shall section 1 carry? Hearing no "yeas," that is defeated.

Shall section 2 carry? It is not carried.

Shall section 3 carry? It is not carried.

Shall section 4 carry? It is not carried.

Shall section 5 carry? It is not carried.

Shall section 6 carry? It is not carried.

Shall the preamble carry? It is not carried.

Shall the title carry? It is not carried.

Shall the bill carry? It is not carried.

Shall I report the bill to the House? Ordered that the Chair report that the bill not be reported to the House.

The Chair: Bill Pr11, An Act respecting the City of Toronto, sponsored by Mrs Mushinski, MPP.

Shall section 1 carry? Not carried.

Shall section 2 carry? Not carried.

Shall section 3 carry? Not carried.

Shall the preamble carry? Not carried.

Shall the title carry? Not carried.

Shall the bill carry? Not carried.

Shall I report the bill to the House? Ordered that the Chair report that the bill be not reported to the House.

That's very arcane language, you know.

Bill Pr12, An Act respecting the City of Toronto, sponsored by Mrs Mushinski, MPP.

Shall section 1 carry? Not carried.

Shall section 2 carry? Not carried.

Shall section 3 carry? Not carried.

Shall the preamble carry? Not carried.

Shall the title carry? Not carried.

Shall the bill carry? Not carried.

Shall I report the bill to the House? Ordered that the Chair report that the bill be not reported to the House.

I appreciate your attendance here with us today. These matters will be disposed of in the House this afternoon.

Are there any further items of business from committee members? No? Seeing none, I declare the meeting adjourned.

The committee adjourned at 1031.

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Mercredi 29 novembre 2000

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regulations and private bills**

**Comité permanent des
règlements et des projets
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS

Wednesday 29 November 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Mercredi 29 novembre 2000

The committee met at 1000 in room 1.

KMFC HOLDINGS INC ACT, 2000

Consideration of Bill Pr28, An Act to revive KMFC Holdings Inc.

The Vice-Chair (Garfield Dunlop): Good morning, everyone. We're going to call the meeting to order.

The first order of business is Bill Pr28, an Act to revive KMFC Holdings Inc. The sponsor is Mr Gerry Ouellette. I'd like to ask Mr Ouellette and the applicant if they would like to come forward, please.

Mr Jerry J. Ouellette (Oshawa): Thank you, Mr Chair. Just a brief summary: the company was brought forward in 1988 and was dissolved in 1996. Through a series of errors in the dissolution the reality was that there were some holdings that needed to be addressed at that time and the company has to be revived in order to address those holdings.

We've brought the individuals forward and I believe we can introduce ourselves. They have a presentation, should we like, or I'll leave it to your discretion, Chair, as to how you'd like to handle it.

The Vice-Chair: Please introduce yourselves. If we can have a brief presentation, that would be fine.

Mr Joel Palter: Good morning. My name is Joel Palter. I'm the lawyer for the applicants. This is Mrs Ruth Kaaz and Mr Harold Kaaz.

Briefly, the company was dissolved. At the time it was dissolved, Mr and Mrs Kaaz were the sole officers and directors of the company. The sole shareholder of the company was a company called Dlorah Zaak Investments Ins. Mr and Mrs Kaaz are still, and were at that time, the sole officers, directors and shareholders of that company. All the voting shares are held by them. Mr Kaaz holds some of the voting shares in trust only for their children, so basically it is their company.

Back in 1989, KMFC Holdings was a nominee and trustee for Dlorah Zaak Investments with respect to specific property. Inadvertently, everyone forgot that to be the case and, come 1996, the Kaazes no longer thought they needed KMFC Holdings and they dissolved it. It certainly had no assets. It simply was a trustee for their existing company.

I'm happy to answer any more specific questions.

The Vice-Chair: Are there any questions from the committee? Mr Ouellette, do you have anything to add to that?

Mr Ouellette: No, not necessarily, Chair. I think that kind of explains the situation.

The Vice-Chair: Can I ask the parliamentary assistant if there are any questions from the government.

Mr Brian Coburn (Ottawa-Orléans): No, there are none and we have received no objections.

The Vice-Chair: Are the members ready to vote on this? OK.

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Yes.

Thank you very much, sir.

Mr Palter: Thank you very much.

The Vice-Chair: That's the way government works around here.

MUNICIPALITY OF SIOUX
LOOKOUT ACT, 2000

Consideration of Bill Pr31, An act to change the name of The Corporation of the Town of Sioux Lookout to The Corporation of the Municipality of Sioux Lookout.

The Vice-Chair: We're going to number 3, Bill Pr31. Is it OK with the committee if we go on without Mr Hampton? He is not available this morning. Does anybody disagree with that?

Mrs Claudette Boyer (Ottawa-Vanier): No problem.

The Vice-Chair: Would the applicant introduce himself and carry on with any comments he may have.

Mr John McDonald: I'd like to introduce our chief administrative officer, John Baird, and our administrative assistant, Twyla Nicholson. I myself am the mayor of the now town of Sioux Lookout, and I want to thank you very much for allowing us to come here today to make this presentation.

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The Vice-Chair: Acclaimed, at that.

Mr McDonald: Thank you. Yes, I was very honoured to receive that.

We amalgamated in 1998 under a commissioner's restructuring order and the name of our community was not dealt with at that time. There was a suggestion that it be put on a ballot and have the people decide if they wanted

a name change, but the council of the time elected not to do that. We just finished our third year of amalgamation. It has become abundantly clear that we are no longer a town, we are now a municipality, especially when you look at the other restructuring orders that are taking place across the province that are similar to ours. Their names have been changed to "municipality", which more adequately fits the situation. I might add we grew from six square kilometres to 536 square kilometres, so that gives you an idea of the size of our community.

There has been some concern among some of our residents that there is a large cost associated with this. Our council has clearly demonstrated that we are not going to automatically change all of our letterhead immediately because it's not necessary. As the supplies are used up and we replace them, we'll replace them with the new name. The only two things that require immediate change would be our corporation seal and maybe our parking tickets. Other than that, we're not looking at a major expense for this name change.

I personally and council have worked hard to try and unify our community and we feel that calling it a municipality more adequately fits our situation. I think that's about all I would like to say about the application.

The Vice-Chair: Does anyone else have any comments on this application? I ask the parliamentary assistant if he has any comments.

Mr Coburn: I'd just like to report that we have no objections from any of the ministries. I'd just like to point out as well that this has been quite a process for you, and, hopefully, with the passage of the red tape bill, this is something that in the future has eliminated this convoluted process and municipalities will be able to move on and be able to do it.

The Vice-Chair: Do any of the committee members have any questions? Is everyone ready to vote?

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall section 4 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Carried.

Thank you very much. Is there any snow up there?

Mr McDonald: About five inches, but it's fairly mild.

The Vice-Chair: Are you expecting a good snow-mobile winter?

Mr McDonald: We didn't have a good one last year, but I hope this year.

The Vice-Chair: Good luck. Thanks for being here.

Mr McDonald: Thank you very much.

CANADIAN NATIONAL EXHIBITION ASSOCIATION ACT, 2000

Consideration of Bill Pr32, An Act respecting the Canadian National Exhibition Association.

The Vice-Chair: The committee will go back to Bill Pr32, An Act respecting the Canadian National Exhibition Association. The sponsor is Mr Morley Kells.

Mr Morley Kells (Etobicoke-Lakeshore): Good morning. I have with me today Mr Charney. He's been representing the Canadian National Exhibition Association as long as I can remember. We were here some 15 or 20 years ago doing something similar. The bill is straightforward. The explanatory note is short. The exhibition association has applied for special legislation to alter the composition of its membership and of its board of directors. Of course, the government feels that this is in order. It's laid out there in detail. I'm sure Mr Charney would be happy to answer any questions you have.

The Vice-Chair: Do you have any questions yourself, sir?

Mr Gerald Charney: I don't. I have been here on three other occasions over the years amending the legislation.

The Vice-Chair: Do any committee members have questions?

Mr Pat Hoy (Chatham-Kent Essex): The membership of the association is divided into four sections and you put specific numbers to membership, for example, from the municipal section, "not to exceed 27 members." Are these membership numbers changing with the passage of this bill or do they remain the same?

Mr Charney: The municipal section numbers have changed. The municipality used to nominate 15 members at large and the association is taking it upon itself to nominate the 15 members at large. We feel we are closer to the local community than municipal council, and with their approval they have transferred that at-large membership to us. In that sense it's changing.

Mr Hoy: Are any of the other membership sections changing?

Mr Charney: No.

Mr Hoy: They remain the same.

The Vice-Chair: Any other questions? Does the parliamentary assistant have any comments on this?

Mr Coburn: No. We have no objections. In fact, we hadn't heard from the city of Toronto and staff have tried on a number of occasions to contact them to see if they had any concerns. We hadn't received a reply so it can't be something of any concern to them. So we have no objections.

Mr Kells: They're too busy running an independent country.

Interjection: They have other items on their plate.

The Vice-Chair: Are the members ready to vote on this?

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall section 4 carry? Carried.

Shall section 5 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Agreed.
Thank you very much, sir.

BANK OF NOVA SCOTIA TRUST COMPANY ACT, 2000

Consideration of Bill Pr26, An Act respecting The Bank of Nova Scotia Trust Company and National Trust Company.

The Vice-Chair: May I have the indulgence of the committee to proceed without Mr Mazzilli? He is on his way in to work.

This bill has gone to the estate commissioners. I have a report back and will read it out. It is to Mr DesRosiers, the Clerk of the Legislative Assembly.

"Dear Mr DesRosiers:

"Report pursuant to section 58, Legislative Assembly Act

"Re: Bill Pr26, An Act respecting The Bank of Nova Scotia Trust Company and National Trust Company

"We are of the opinion that the bill in its present form, attached, should pass.

"Dated this 7th day of November, 2000."

It is signed by Susan Greer and John D. Ground, the estate bill commissioners.

I would ask the applicants to introduce themselves, please, and make any comments they may have on the bill.

Mr Stephen Clark: I'm Stephen Clark. I'm a partner with the law firm of McCarthy Tétrault. With me is Rory MacDonald, who is the president and chief executive officer of the Bank of Nova Scotia Trust Co.

The Vice-Chair: Do you any kind of presentation or comments you would like to make?

Mr Clark: We can give a short introduction, if that would be helpful.

The Vice-Chair: That would be great.

Mr Clark: The bill that is before you now is similar to one that was presented a couple of years ago. If we back up a bit, as most of us are aware, the Canadian banks acquired the trust companies and, beginning with the acquisition by the Bank of Nova Scotia of Montreal Trust Co back in 1994, a couple of years later, the Bank of Nova Scotia requested that all of the personal trust business that was in Montreal Trust be moved to the Bank of Nova Scotia Trust Co. The only way to accomplish that is to either appear before a judge and request that each and every estate where an individual executor or trustee has been named, and that was naming Montreal Trust, be moved to Scotia Trust—that's a huge process and burden on the courts. The other problem is that many of the individual trustees or executors do not exist to consent personally, because they are now deceased, with the result that the only way the personal trust business

can be moved from one trust company to another is with private legislation.

Accordingly, the Bank of Nova Scotia Trust Co appeared a couple of years ago and asked that it be moved to the Bank of Nova Scotia Trust Co. A private bill was done doing that and was similarly enacted in each of the provinces of Canada.

The Toronto-Dominion Bank has done exactly the same thing with respect to its personal trust business. Then, finally, here we are now in 1997, when the Bank of Nova Scotia acquired the National Trust Co. So this bill similarly moves all of the personal trusts over from National Trust Co to the Bank of Nova Scotia Trust Co. The Bank of Nova Scotia Trust Co assumes all of the obligations with respect to each of those trusts, therefore there is no impact on any one of the individual trusts that moves over. That's a brief explanation of what this is about.

The Vice-Chair: Thank you. Are there any questions by any of the committee members on this?

Mrs Boyer: I'm just wondering about the letter you reported to us from Madam Justice Susan Greer. Why is this coming to us? Because they had already applied to the court, or what? I'm just curious to see that a judge would write such a letter.

Clerk Pro Tem (Ms Tonia Grannum): No. What happens is, this bill had an estate provision so it had to be referred to the Commissioners of Estate, and then they report back to the committee. This is their report.

Mrs Boyer: OK. I was just wondering if it's not a personal matter. Thank you.

The Vice-Chair: Does the parliamentary assistant have any comments on this?

Mr Coburn: No, other than to tell you that from circulation to the various ministries affected there's no objections to it at all.

The Vice-Chair: Are the members ready to vote on this bill?

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall section 4 carry? Carried.

Shall section 5 carry? Carried.

Shall section 6 carry? Carried.

Shall section 7 carry? Carried.

Shall section 8 carry? Carried.

Shall section 9 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Yes.

Thank you very much, sirs.

Is there anything else we have for the committee? No.

With that, we stand adjourned.

The committee adjourned at 1023.

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Also taking part / Autres participants et participantes

 Mr Morley Kells (Etobicoke-Lakeshore PC)

Clerk pro tem/ Greffière par intérim

 Ms Tonia Grannum

Staff / Personnel

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLSCOMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Wednesday 13 December 2000

Mercredi 13 décembre 2000

The committee met at 1008 in committee room 1.

IDLEWYLD MANOR ACT, 2000

Consideration of Bill Pr33, An Act respecting Idlewyld Manor.

The Vice-Chair (Mr Garfield Dunlop): We'll call the meeting to order. The only item of business is Bill Pr33, An Act respecting Idlewyld Manor. The sponsor is David Christopherson. David, do you have any comments on this?

Mr David Christopherson (Hamilton West): I'll be very brief. I've met with the trustees on this. I've gone through their proposal, and from what I can see, in terms of what we deal with, it's fairly straightforward. It's a matter of upgrading the legal foundation for Idlewyld. I guess really all I would do is suggest to you that it has my total support as the local member. I'm prepared to entertain any questions or comments, particularly that the ministry might have through the parliamentary assistant. But by way of presentation, I would introduce Paul Milne, who is on the board and will speak to the details of the bill. So with that, maybe I could turn it over to Paul, Chair?

The Vice-Chair: Yes, go ahead, Mr Milne.

Mr Paul Milne: Good morning, Mr Chair and members of the committee. I'd like to clarify: I'd been on the board for some years and left the board to assist the manor in this particular act and in the renewal of governance. It is my hope to go back on the board when it's all finished for the very reason that I think the organization is one of the most interesting and well-run organizations that I personally have contributed to in many years.

I won't take a lot of your time, but I thought I'd give you some—it has a very interesting background to it. It actually started in 1846. The main act that we're replacing was an 1852 act, and it's the governance in that act that we're modernizing to take into account the changed facility. It started as a soup kitchen and a volunteer organization in 1846 in Hamilton. With the epidemic of cholera in 1851, because of the number of orphans that resulted from that epidemic, it became a facility for orphans, and hence the act that we're replacing. A building was constructed to house the orphans and provide a school for them.

It was later on in the 1800s that a very benevolent lady in the city bequeathed \$4,000 to the home, and, if you can believe it, they built a complete wing for \$4,000 to house aged women. I noted with interest that by 1925 there were 52 ladies in residence, and 22 of them were over 80 years of age and there were three over 90 years of age. The waiting list at that time was some 85. Finally, as the mix of the home started to change more and more, it was in 1848 that it finally became the Aged Women's Home of Hamilton. In 1982, the Idlewyld Manor was the final name change.

The purpose of this bill is to modernize governance. The home has been allocated 96 beds by the ministry, and although it is extraordinarily well-run by the ladies' board of management and the executives and staff of the home, it doesn't suit the very elderly population that now exists in the home, because it's three storeys and it's very difficult to serve them on a long-term-care basis.

In the horizon, what is the future? The future is a new facility—they're working on it now—which will house the current 101 residents plus an extra 96. So the amendment to the act will provide a governance structure that suits that. The previous structure was a board of trustees which basically managed funds, and there was a ladies' committee of management established in 1852 with responsibility for operations. That governance worked well in the beginning, but in today's world it does not work effectively, simply because the ladies' board of management has taken on the tremendous mandate of the building of the new home and applying for the new beds and all that entails, yet the responsibility remains with the trustees. The change now will be that a board of trustees will be created, the board of management will no longer be in place and the ladies' board of management will populate the trustees of the home. The trustees will all be leaving their position, and a new board of trustees for a foundation is being established.

That's basically the background of it. I can tell you that there were substantial negotiations in discussions with the public guardian and trustee's office before the proposed bill was submitted. We took into account the charitable implications of what we're doing with that office. I really do appreciate their support and efforts. Also, we are before you today unanimously. The ladies' board of management and the trustees have all voted unanimously to proceed with this bill. Those are basically my comments.

The Vice-Chair: Questions from, first of all, the parliamentary assistant. Do you have any questions?

Mr Brian Coburn (Ottawa-Orléans): No, I have no questions. We have no objections. On a personal note, I just want to congratulate you on the reorganization so you're better able to meet the challenges into the future. I wish you well in your future endeavours.

Mr Dave Levac (Brant): I have just a couple of quick questions of clarification, maybe to David. Is there any reason why this isn't in both official languages?

Clerk of the Committee (Ms Tonia Grannum): Private bills don't have to be in French.

Mr Levac: Private bills don't have French? OK. That's just a clarification. I wasn't sure of the process.

The second question is in regard to the bill specifically. You mentioned that both groups are in favour of it. Is there an agreed-upon mix or blend of who can become members of the board, or has that already been deciphered as to how many people would constitute the board itself?

Mr Milne: Yes. We're providing for a minimum-maximum board of seven to 15. The ladies' board of management presently comprises nine. All nine will sit as the new trustees of the manor. The present trustees are five in number, and they will move to the trustees of the foundation that has been incorporated.

Mr Levac: I noticed in the notes that there were no known objectors. Did you seek anyone from the community who felt this might not be the appropriate thing to do?

Mr Christopherson: If I can, that was the first thing that crossed my mind when we're making changes like this. I can tell you that everyone who might possibly, conceivably be involved in this is supportive of it. Idlewyld is known well across the entire city. It has an excellent reputation. I would be absolutely stunned and shocked should anyone express any concern whatsoever about anything other than agreeing to the change here.

Mr Levac: My final comment is that I congratulate the member of the riding for the homework that has been done, because these are the types of bills that are very, very important to the community. When they're brought forward, the fact that you've done all that homework ahead of time prevents any kind of misgivings or any misunderstandings that the community would go through during that time. I compliment you on that. If not done, completely communicate with the community that this is for the better—I'm sure you've already done that. But my hat is off to you in terms of this bill.

Mr Christopherson: Thank you, Dave.

Mrs Claudette Boyer (Ottawa-Vanier): It's just that I want clarification. When I read yesterday your briefing note, you were saying that now, instead of having a board of trustees and a board of management, you would just have one. When I read it yesterday, I thought there was going to be a board of trustees and a board for the foundation, but this will be the same one?

Mr Milne: No. The Idlewyld Manor, which is the act in front of you, will have its own board of trustees and

that will be the former ladies' board of management. The Idlewyld Manor Foundation has been incorporated, and its mandate will be to raise funds and manage funds for Idlewyld Manor only. It's a captive foundation. The present board of trustees of Idlewyld Manor will become the trustees of the Idlewyld Manor Foundation so that there will be distinct organizations and distinct boards of trustees.

Mrs Boyer: OK. Thank you very much.

The Vice-Chair: Any other questions from the committee members? Is everyone ready to vote on this?

Mr Levac: Is there an amendment that has to be done?

The Vice-Chair: Yes. Mme Boyer has the amendment. It's on section 11.

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall section 4 carry? Carried.

Shall section 5 carry? Carried.

Shall section 6 carry? Carried.

Shall section 7 carry? Carried.

Shall section 8 carry? Carried.

Shall section 9 carry? Carried.

Shall section 10 carry? Carried.

We have an amendment for 11.

Mrs Boyer: I move that section 11 of the bill be struck out and the following substituted:

"Investments

"11. When making investments, the board shall be governed by the provisions of the Trustee Act respecting investments by trustees, with necessary modifications."

The Vice-Chair: Are there any questions on this amendment? All in favour of the amendment?

Mr Garry J. Guzzo (Ottawa West-Nepean): Is this with consent?

Mr Christopherson: Yes. They were consulted by staff yesterday and I just checked now and they're fine with the change.

Mr Guzzo: I have trouble voting for that because I am not a believer in the Trustee Act, but if it's on consent, carried.

The Vice-Chair: Carried? Everybody is in favour of it? That's carried.

Shall section 11, as amended, carry? Carried.

Shall section 12 carry? Carried.

Shall section 13 carry? Carried.

Shall section 14 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you very much, everyone. That's it for today.

Mr Milne: Mr Chairman, may I make just one final comment? There's always the perception out there that when you deal with government that it's difficult and a hardship. I think the members of the committee should know that from the moment I made my first call to

legislative counsel—both Susan Klein and Don Revell—their response was immediate and their assistance was immediate and was continuing. I can tell all of you very frankly that that support and help, because it's not something we do every day, brought us here quickly. We needed to be here quickly, and it was with that support and assistance that we got it all done and got here

quickly. I can tell you that both I and the trustees very much appreciate that help. I just wanted you all to know that.

The Vice-Chair: We're all pleased that you'd say that. On behalf of the staff, thank you. Thank you for attending. The meeting is adjourned.

The committee adjourned at 1020.

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COMITÉ PERMANENT DES RÈGLEMENTS
ET DES PROJETS DE LOI PRIVÉS

Mercredi 20 décembre 2000

The committee met at 1009 in committee room 1.

ST. JEROME'S UNIVERSITY ACT, 2000

Consideration of Bill Pr34, An Act respecting the University of St. Jerome's College.

The Chair (Ms Frances Lankin): I call the meeting to order. The committee today will be dealing with consideration of Bill Pr34, An Act respecting the University of St. Jerome's College. This bill is sponsored by Mr Wettlaufer.

Mr Wettlaufer, would you like to introduce the applicant, and if you have any opening comments yourself, please go ahead.

Mr Wayne Wettlaufer (Kitchener Centre): The reason for the bill is a change of name and I believe some cleanup items. I expect that we won't have objections from any members of any of the caucuses. That's essentially it.

Debbie Pecoskie and Frank Williams are here representing St Jerome's.

The Chair: I'll say welcome to both of you. It's nice to see you again, Mr Williams, in a different setting but often around this table. Would you like to make some introductory comments with respect to the bill?

Mr Frank Williams: As Mr Wettlaufer has just said, my name is Frank Williams. I am counsel for the University of St Jerome's College, hopefully soon to be a little shorter, St Jerome's University.

I don't know how much detail you want me to go into. I can go through briefly what was in the compendium that I sent over to the clerk. Perhaps that's of some use to the committee.

The Chair: I think a brief synopsis would be helpful for committee members.

Mr Williams: I'll do my glasses routine here for a minute, so bear with me.

Some background: the University of St Jerome's College has been referred to for several years as St Jerome's university in a practical sense. In some regards we're just trying to catch up with reality in that respect. We're requesting that the committee approve that the name be changed to reflect current usage.

The composition of the teaching staff has also changed in St Jerome's over the years, from mainly priests to mainly laypersons, with the occasional priest on staff. The board has therefore decided not to restrict the

makeup of persons who may be representing the teaching staff on the board to only laypersons, so we've requested a change in that respect.

The board of St Jerome's would also like to require that all board members, except the Provincial Superior of the Congregation of the Resurrection in Ontario or his delegate, be Canadian citizens. Again, in fact, that reflects the current practice at St Jerome's.

We would also like to ensure, in order to have some corporate history on the board, that the term of reappointment be increased from one term to two terms so we have a little bit more continuity on our board.

One of the present requirements is that the chancellor be elected for a term of four years. We're finding in some instances that that could prove to be somewhat restrictive. We've requested now that the act be changed so that it will be a period of up to four years, so it can be flexible according to the bylaws of the board.

The last significant change is with respect to the audited financial statements of St Jerome's. In the past it required that we provided copies to the staff, faculty and students. What we'd like to do is bring it into the modern age and say that we will make the financial statements available. We're planning to do that over the Internet and to provide a hard copy through the president's office and in the library.

The only other major change in drafting is that we're now referring to non-teaching staff as "staff" and to teaching staff as "faculty" to again reflect modern usage at most universities.

That's basically a summary of what we've done. The only other change, as legislative counsel can attest to, is bringing some of the language up to more modern parlance.

The Chair: Ms Pecoskie, did you want to add any comments?

Mrs Deborah Pecoskie: I think Mr Williams is representing us extremely well. It is basically that we were a Roman Catholic institution and we have become a lay institution, previously founded and owned and operated by the Congregation of the Resurrection, a religious order of priests. With the laypersons taking over the operation of the university, we've made the decision that we should reflect who we are today. We appreciate this opportunity.

The Chair: Mr Coburn, does the ministry have any comments?

Mr Brian Coburn (Ottawa-Orléans): I have no objections. In fact, I have a letter from Minister Dianne Cunningham supporting this change.

The Chair: Mr Bisson, did you have a question?

Mr Gilles Bisson (Timmins-James Bay): I have a question with regard to your annual statement, just to understand what you're saying. I wasn't aware that you need to have a statute here in the Legislature to be able to post your annual statement on the Internet. I'm not quite sure what you were getting at there.

Mr Williams: Let me read the old version and the new version and you can compare what we're doing. The other requirement we're adding is that the board shall now provide a copy of the audited financial statements to the minister. That wasn't previously in the bill either.

It's a bit of a nuance as to what the difference is. The present section reads, "The board shall make a financial report annually to the students, staff, and teaching staff of the university in such manner as the board determines." In truth, I'm not sure each year that there was actually a physical piece of paper that was handed to these three bodies. What we've asked now is that it read: "Every year, the board shall make available to faculty, staff and students the audited financial statement of the university and shall do so in the manner that the board determines."

My discussions with the board are such that we will be planning to post these financial statements on the university Web site as well as making a hard copy available in the president's office and in the library.

Mr Bisson: I am not quite sure of the difference between the two, what the old bill said and what the new bill says. It seems to me you can do that with the old one, but if you want to change it, that's fine by me.

Mr Williams: I think in a strict interpretation, "make available" means you give somebody a physical piece of paper.

The Chair: Further questions or comments from committee members?

Mr Bisson: There might be now.

The Chair: I'm going to move quickly, before the member assumes his seat.

Is there any debate with respect to the bill? Are members ready to vote? OK.

We are dealing with Bill Pr34, An Act respecting the University of St. Jerome's College, sponsored by Mr Wettlaufer.

Mr Bisson: On a point of order, Chair: I understand there was supposed to be a motion moved in order to waive the printing of the bill.

Mr Wettlaufer: After.

Mr Bisson: OK.

The Chair: Are any committee members intending to move amendments to this bill? OK.

Shall sections 1 through 6 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? It shall be done.

I understand there is a motion.

Mr Wettlaufer: I move that the fees and actual cost of printing at all stages be remitted on Bill Pr34, An Act respecting the University of St. Jerome's College.

The Chair: Are there any questions or comments with respect to Mr Wettlaufer's motion? Seeing none, all those in favour, please indicate. That's carried unanimously.

Is there any other business to be brought before the committee this morning?

Mr Bill Murdoch (Bruce-Grey-Owen Sound): I move we adjourn.

The Chair: Mr Murdoch has moved adjournment of the committee. All those in favour, please indicate. That is carried.

The committee is adjourned. Thank you for being with us today.

The committee adjourned at 1018.

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Mr Pat Hoy (Chatham-Kent Essex L)

Ms Frances Lankin (Beaches-East York ND)

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